

1376

Supreme Court of the United States

No. 367 ~~-----~~, October Term, 1907.

~~Erie Railroad Company,
Petitioner,
vs.
Harry J. Tompkins.~~

✓ Order allowing certiorari, filed October 11, ~~-----~~, 1907.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second ~~-----~~ Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration and decision of this application.

Case follows

United States Circuit Court of Appeals
SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second
Circuit, held at the United States Court House, in the City of New York, on the 14th
day of June, one thousand nine hundred and thirty-seven.

Present:

Hon. MARTIN T. MANTON,
Hon. LEARNED HAND,
Hon. THOMAS W. SWAN,
~~MISSILE CUSTODY IS MANDATORY~~
~~MISSILE CUSTODY IS MANDATORY~~

Circuit Judges.

Harry J. Tompkins,
Plaintiff-Appellee,
vs
Erie Railroad Company,
Defendant-Appellant,

Appeal from the District Court of the United States for the Southern
District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States
for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the
judgment of said District Court be and it hereby is affirmed
with interest and costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.
WM. PARKIN,
Clerk.

509 (over)

United States of America

SOUTHERN DISTRICT OF NEW YORK

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 501, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

Harry J. Tompkins,

Plaintiff-Appellee,

against

Erie Railroad Company,

Defendant-Appellant,

as the same remain of record and on file in the office of

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of August, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the said United States the one hundred and sixty-second.

Wm. Parkin
Clerk.

Wm. L. Roberts
Deputy Clerk.

(598)
(all)

367
Due 11/27/37

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 193⁷.

No. 367

Erie Railroad Company,

Petitioner,

vs.

Harry J. Tompkins.

On Writ of Certiorari to the United States Circuit Court of Appeals

for the Second Circuit.

Petition for cer/^{tiorari} **Filed** August 30, 193⁷.
Certiorari granted October 11, 1937.

(

)

420 = 42/

~~1258~~

1259

Plaintiff's Exhibit 1

(MAP)

(PHOTOSTAT OPPOSITE)

~~1260~~

2376

Sumner

KAI

DISTRICT

ATION A

HUGA

VISION ENG

20'

7 PA.

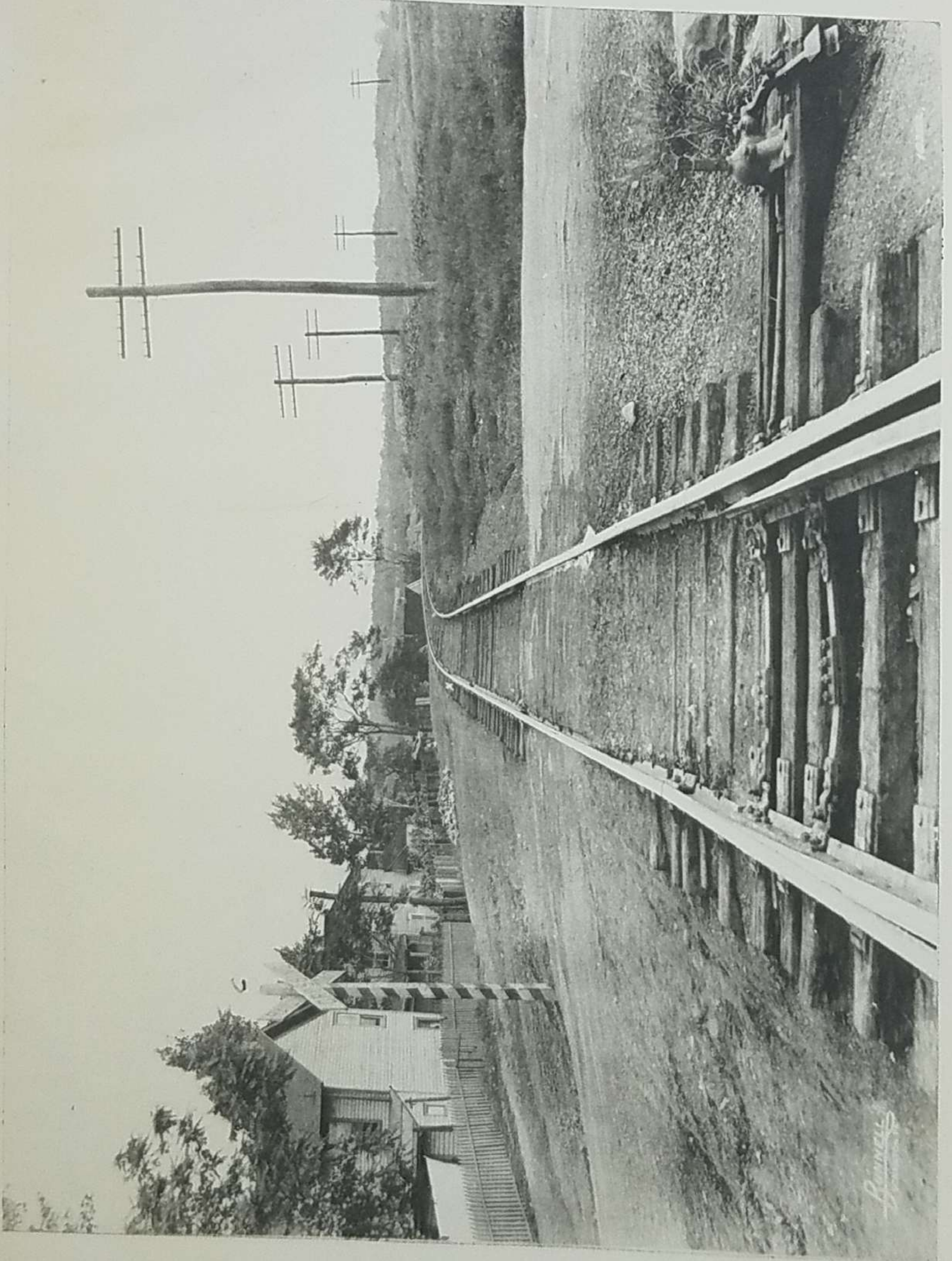
C.E. Roy

353

420-421

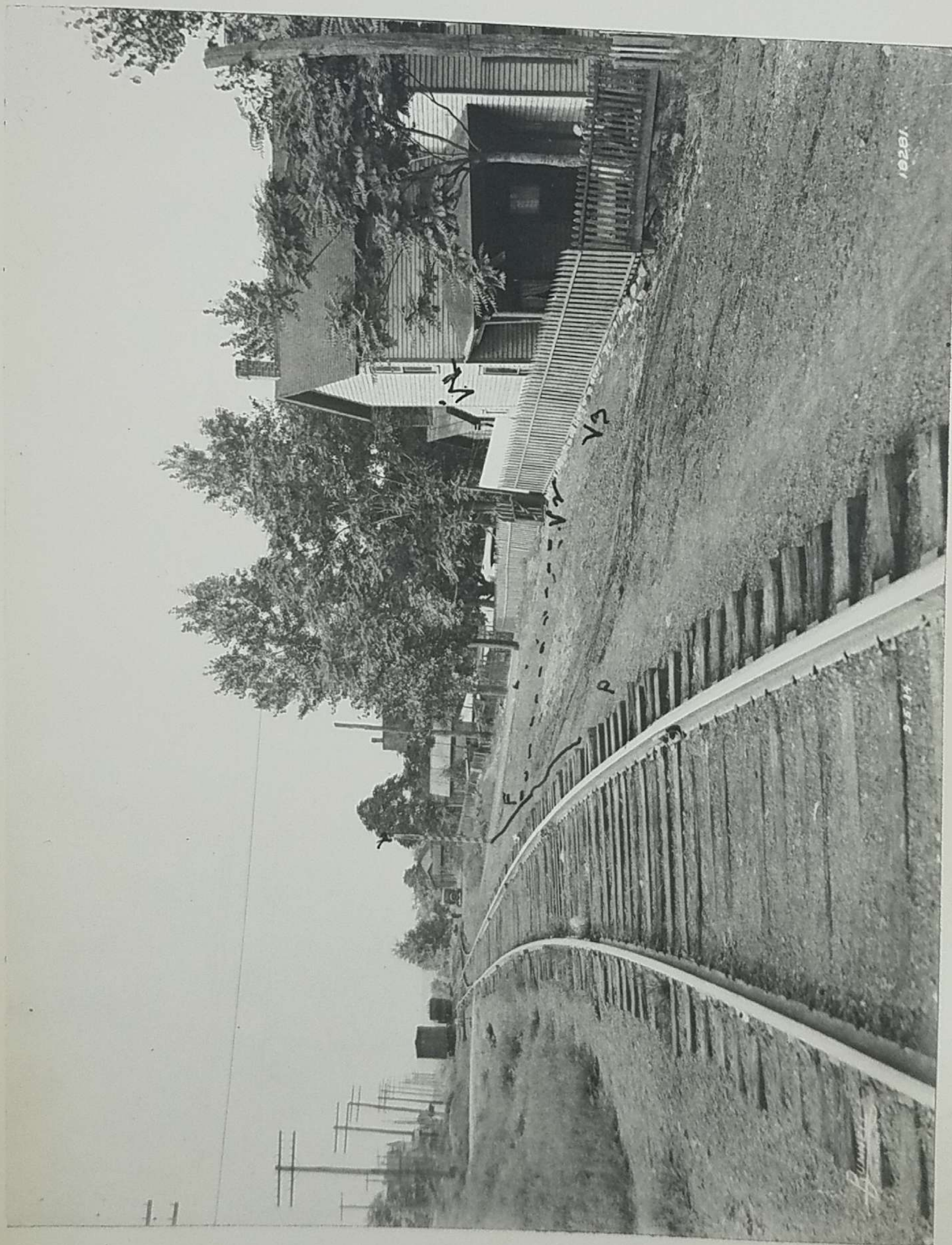
2378

PLAINTIFF'S EXHIBIT 2

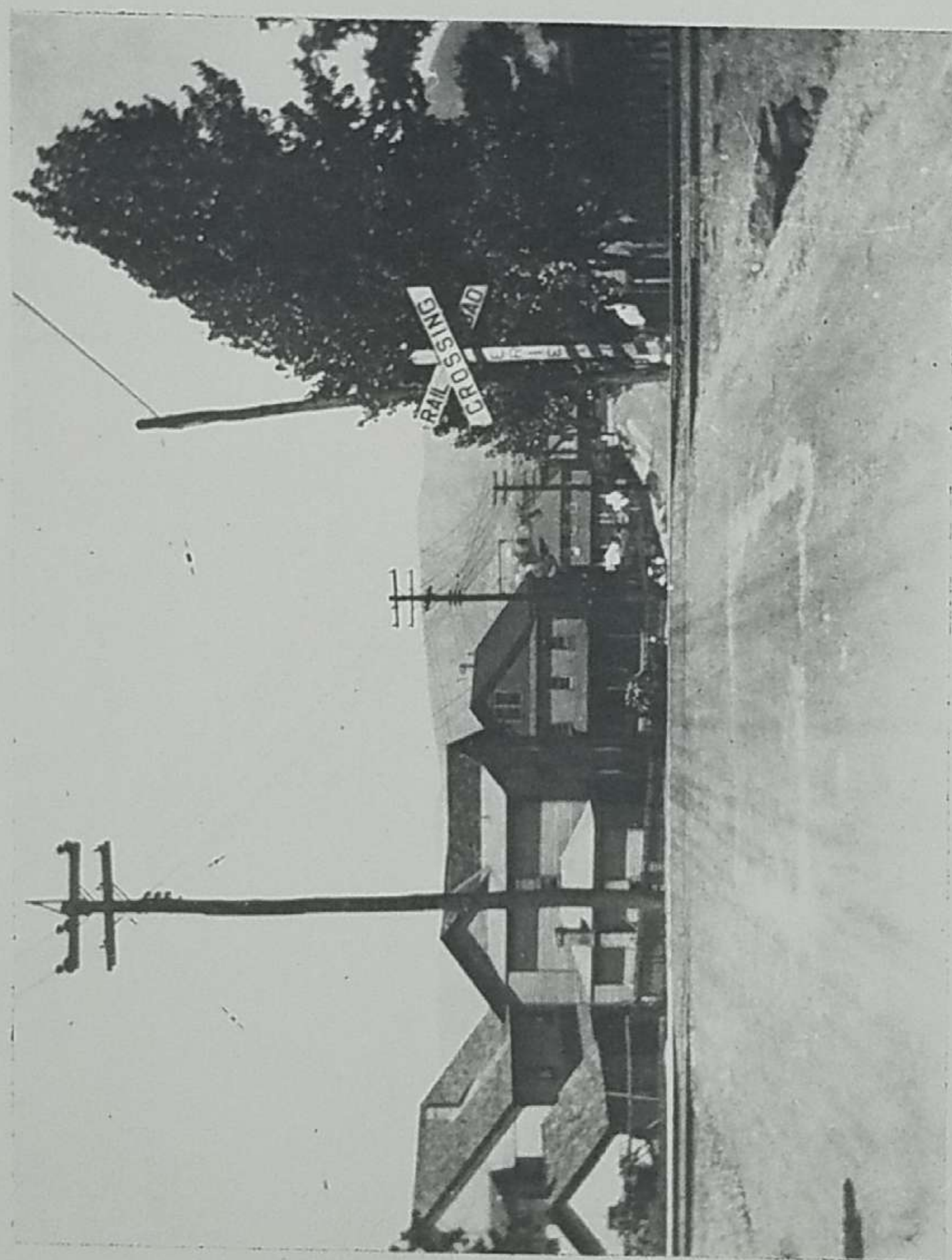


2878

PLAINTIFF'S EXHIBIT 3

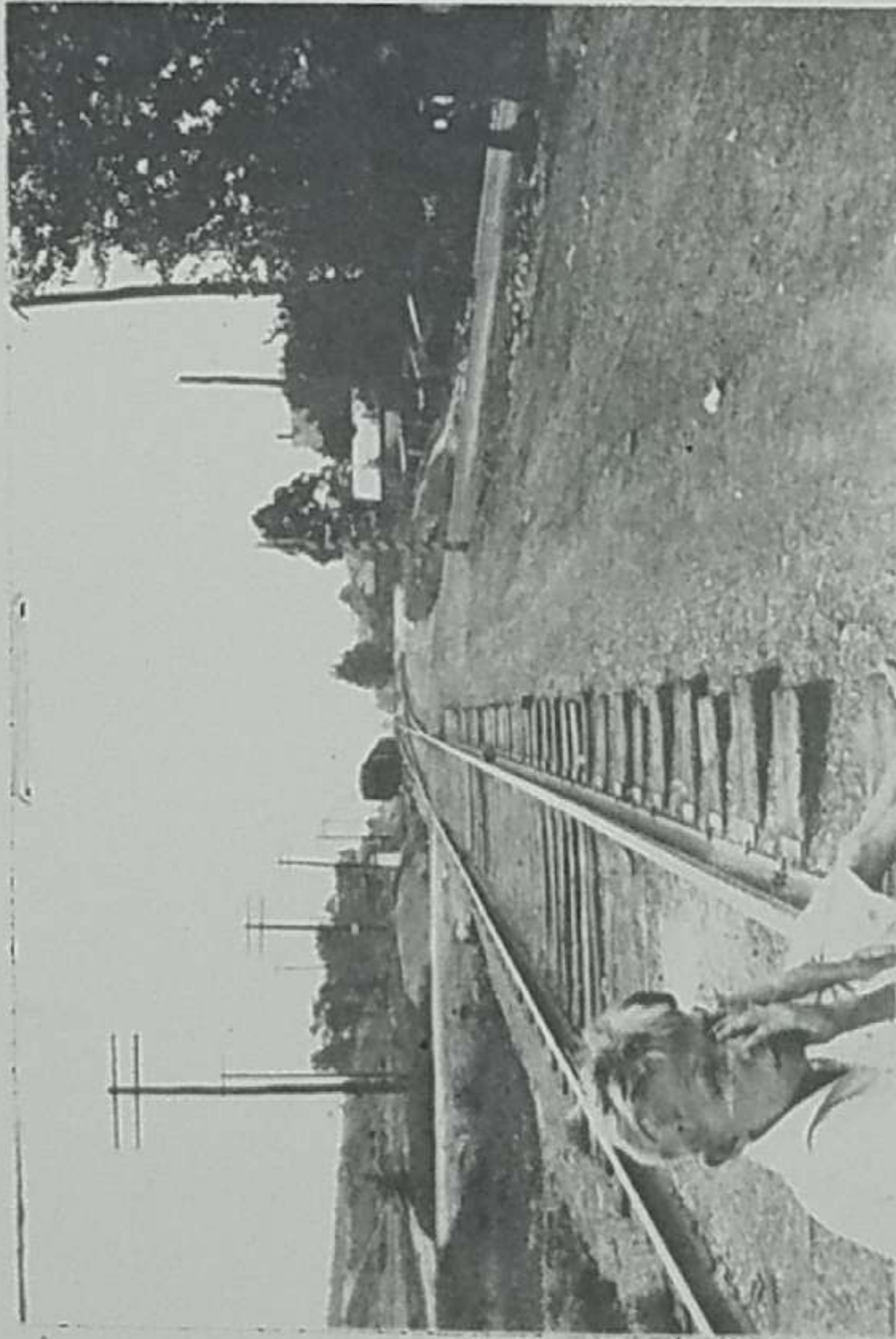


PLAINTIFF'S EXHIBIT 4



2-1-58

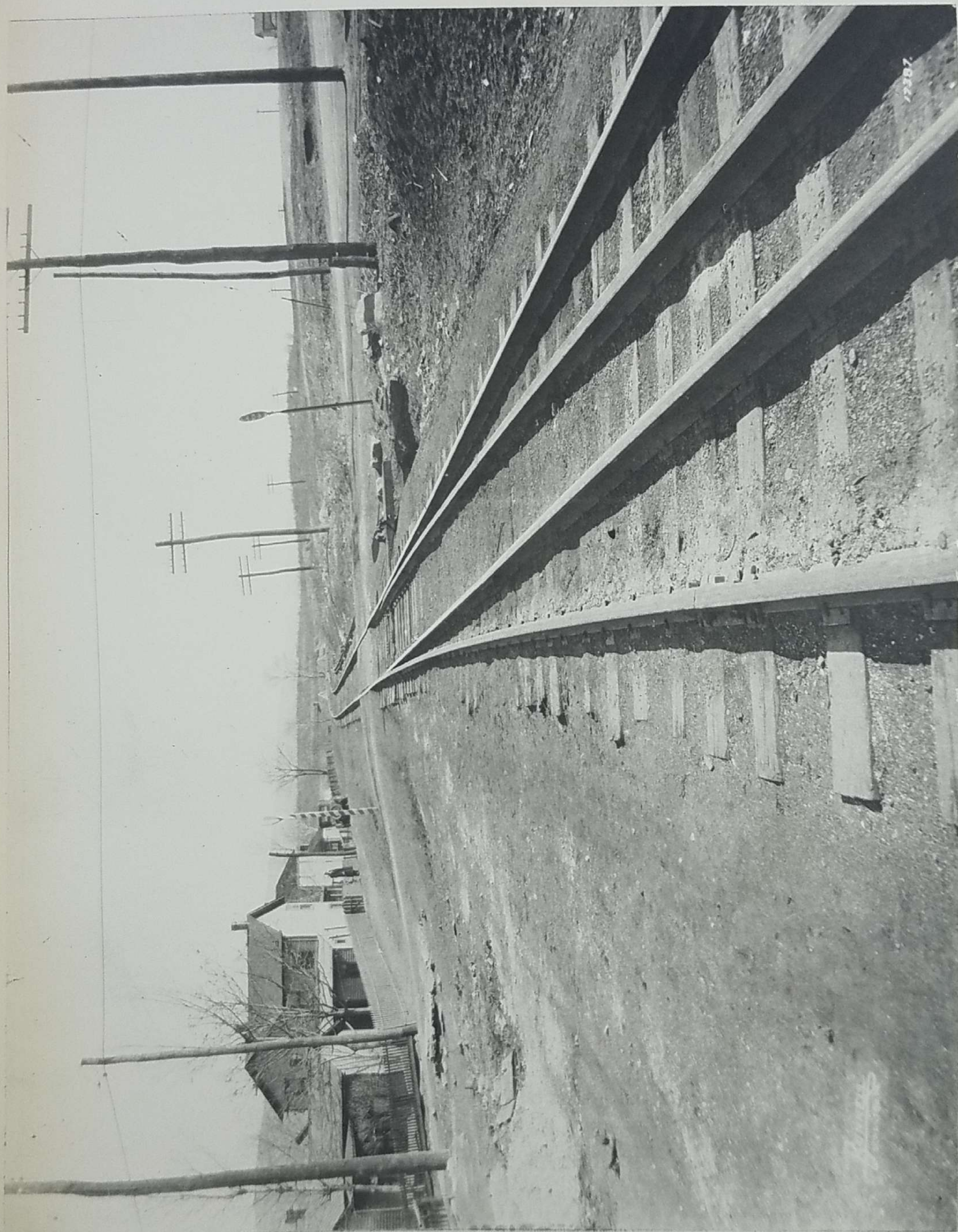
PLAINTIFF'S EXHIBIT 5



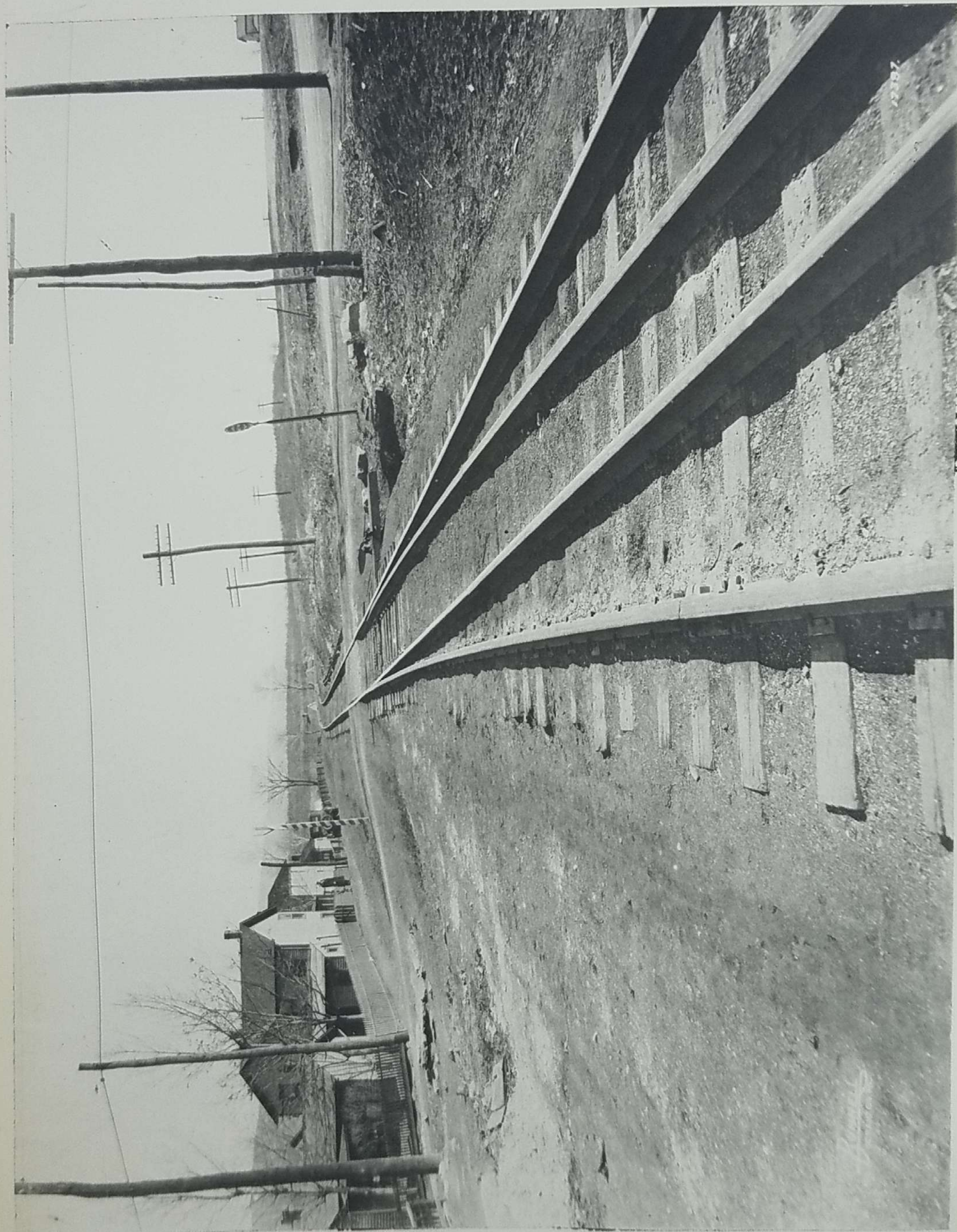
PLAINTIFF'S EXHIBIT 6



DEFENDANT'S EXHIBIT A

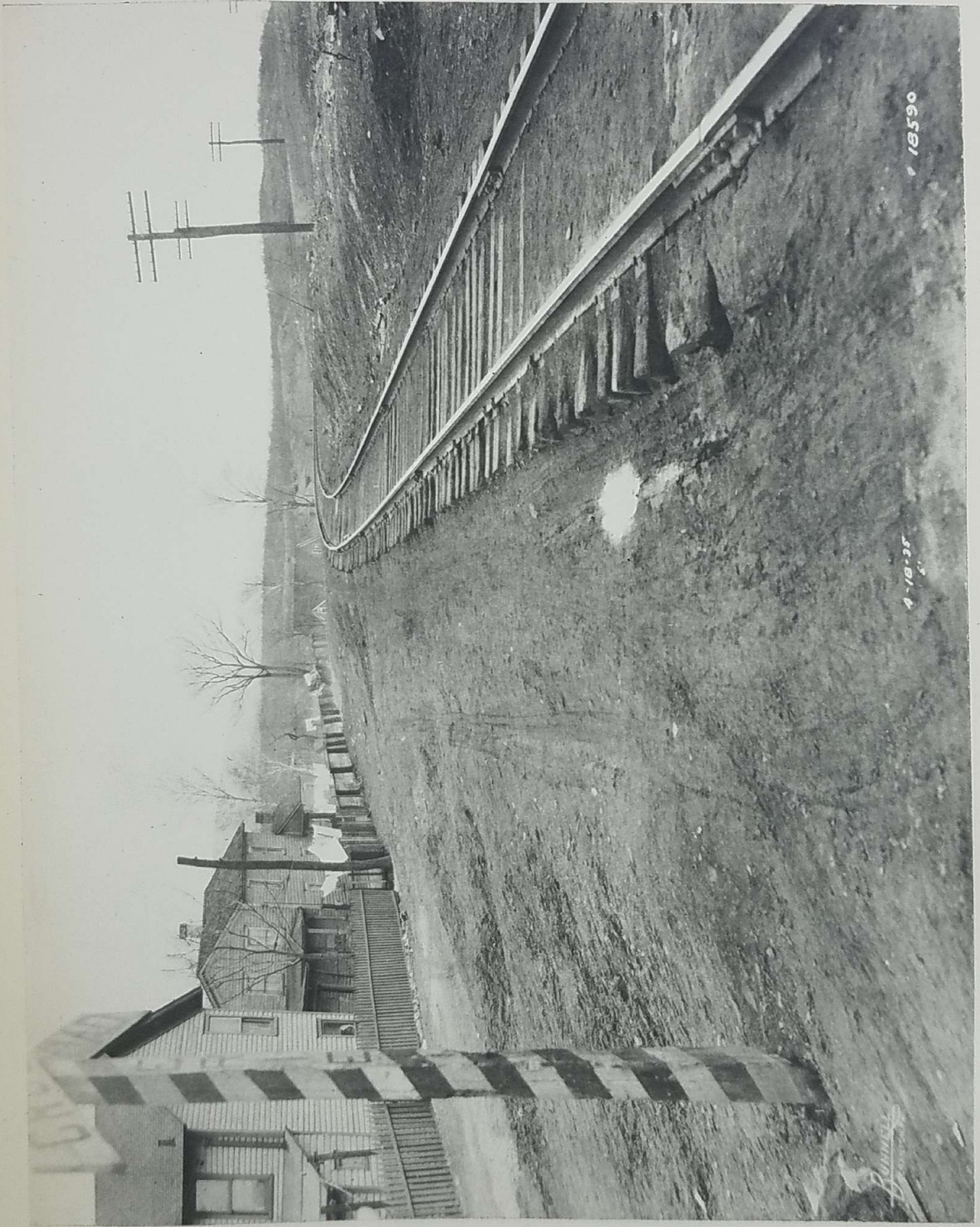


DEFENDANT'S EXHIBIT B



2376

DEFENDANT'S EXHIBIT C



18590

4-18-35

Bunnell
Photographer

2376

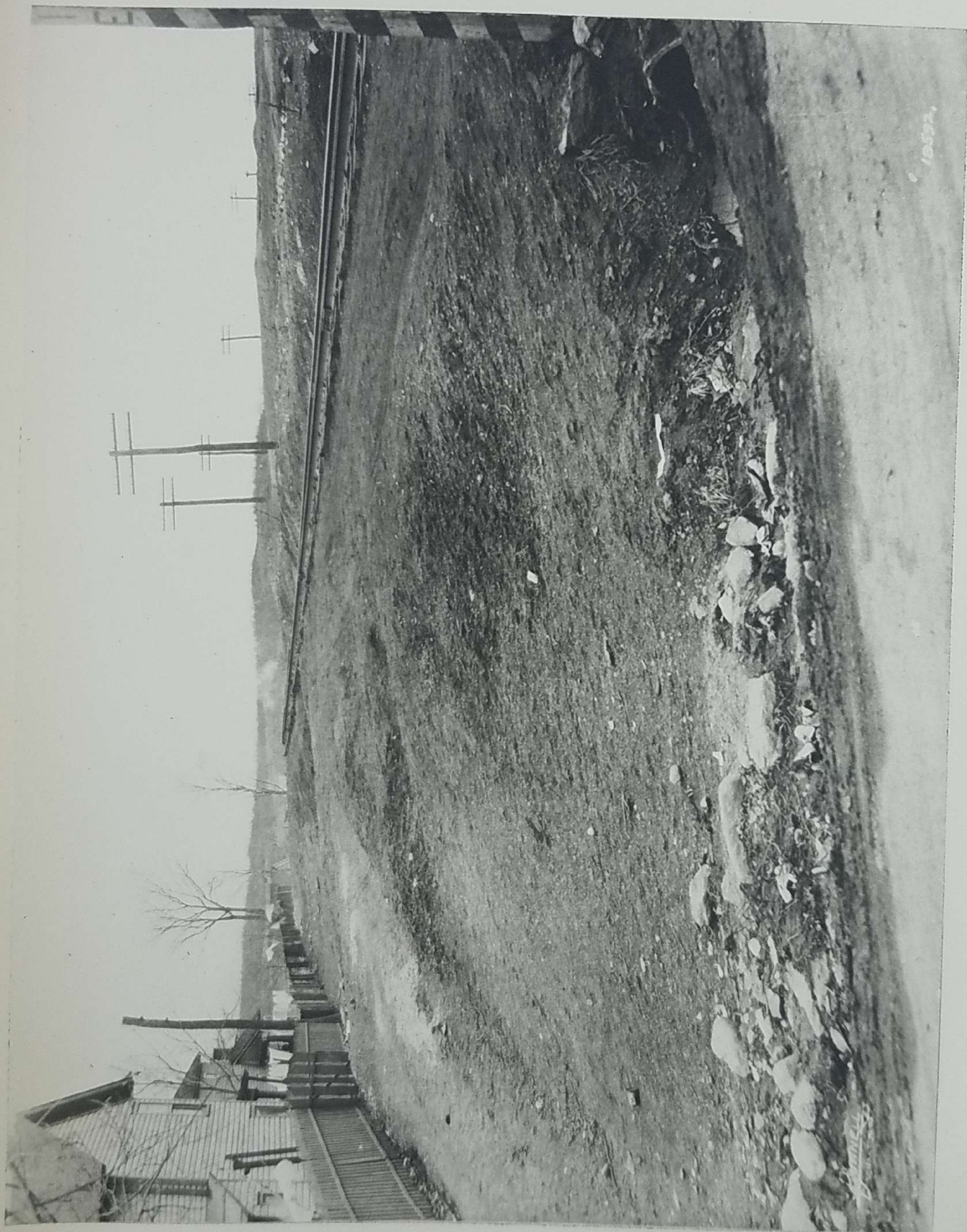
DEFENDANT'S EXHIBIT C



18591

BUNNELL

DEFENDANT'S EXHIBIT C

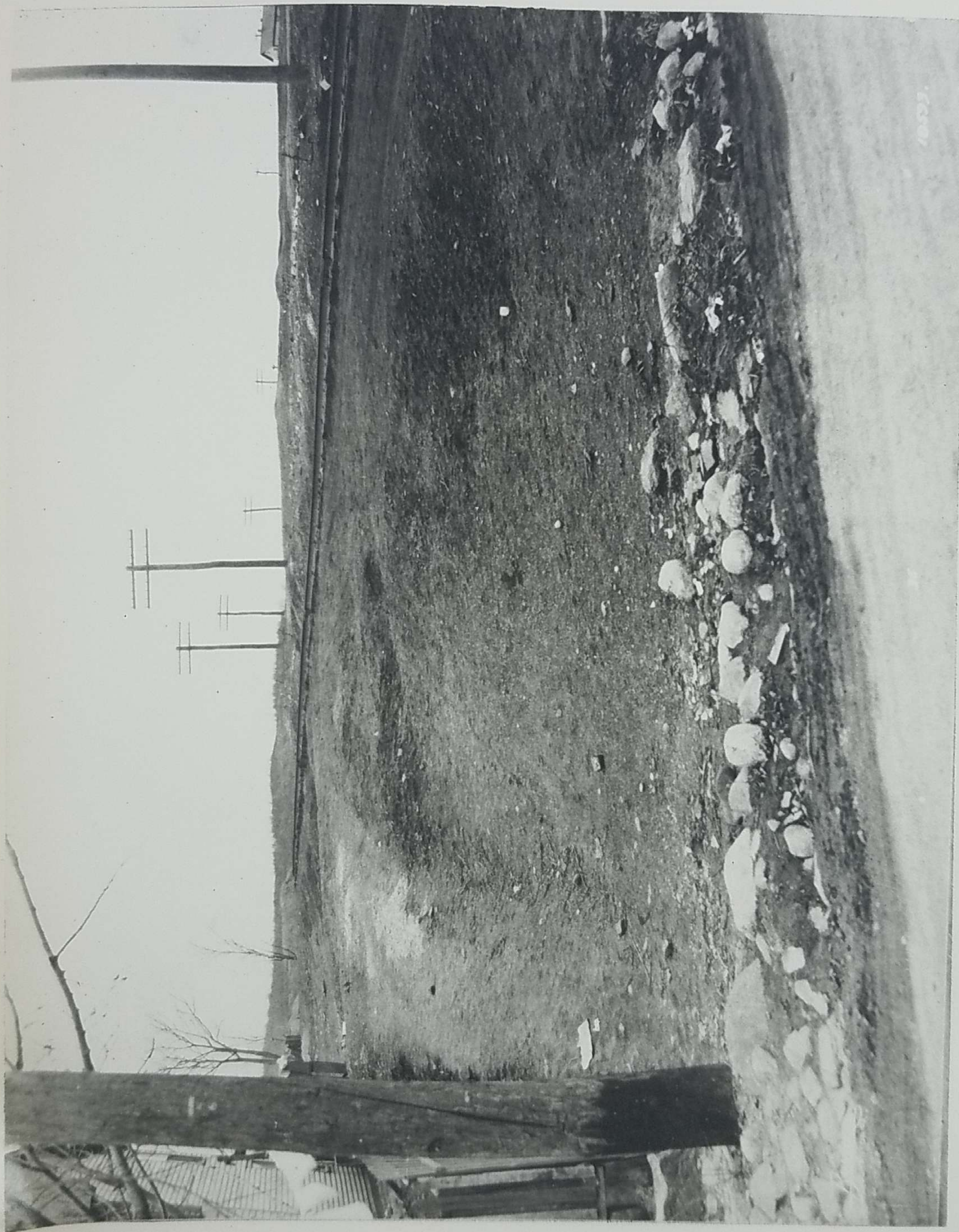


DEFENDANT'S EXHIBIT C



2976

DEFENDANT'S EXHIBIT C



DEFENDANT'S EXHIBIT C



2376

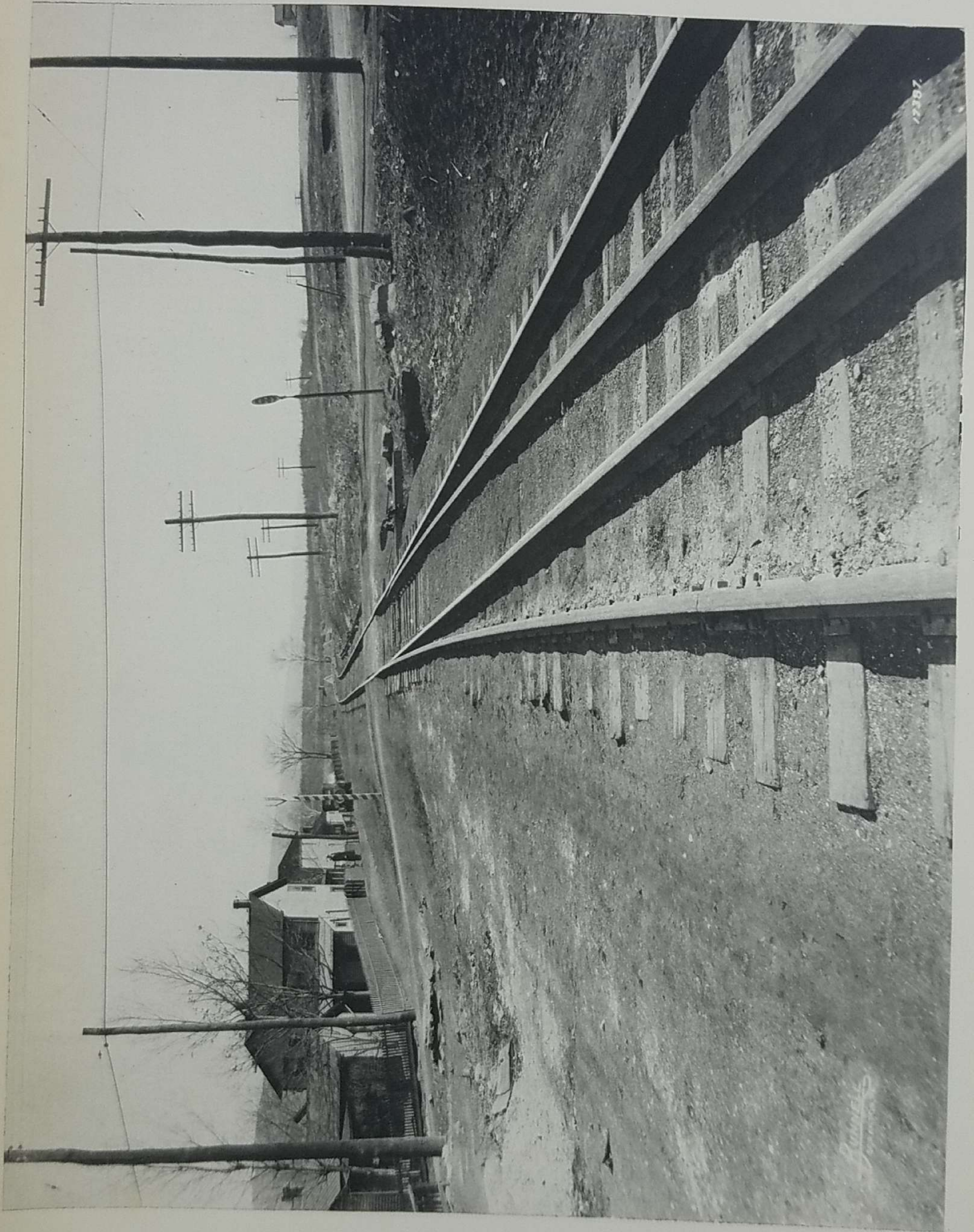
DEFENDANT'S EXHIBIT C



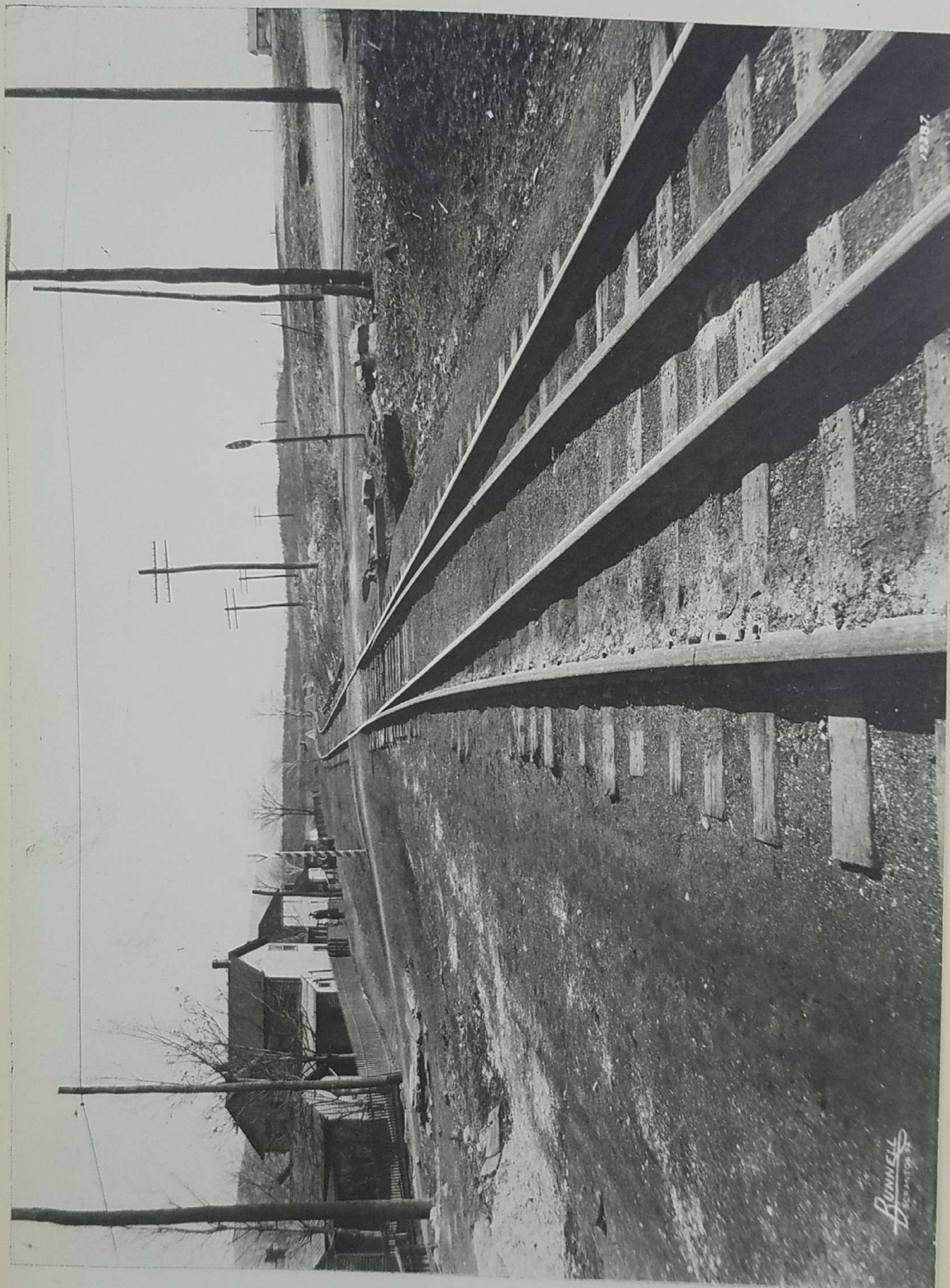
16596

BUNNELL

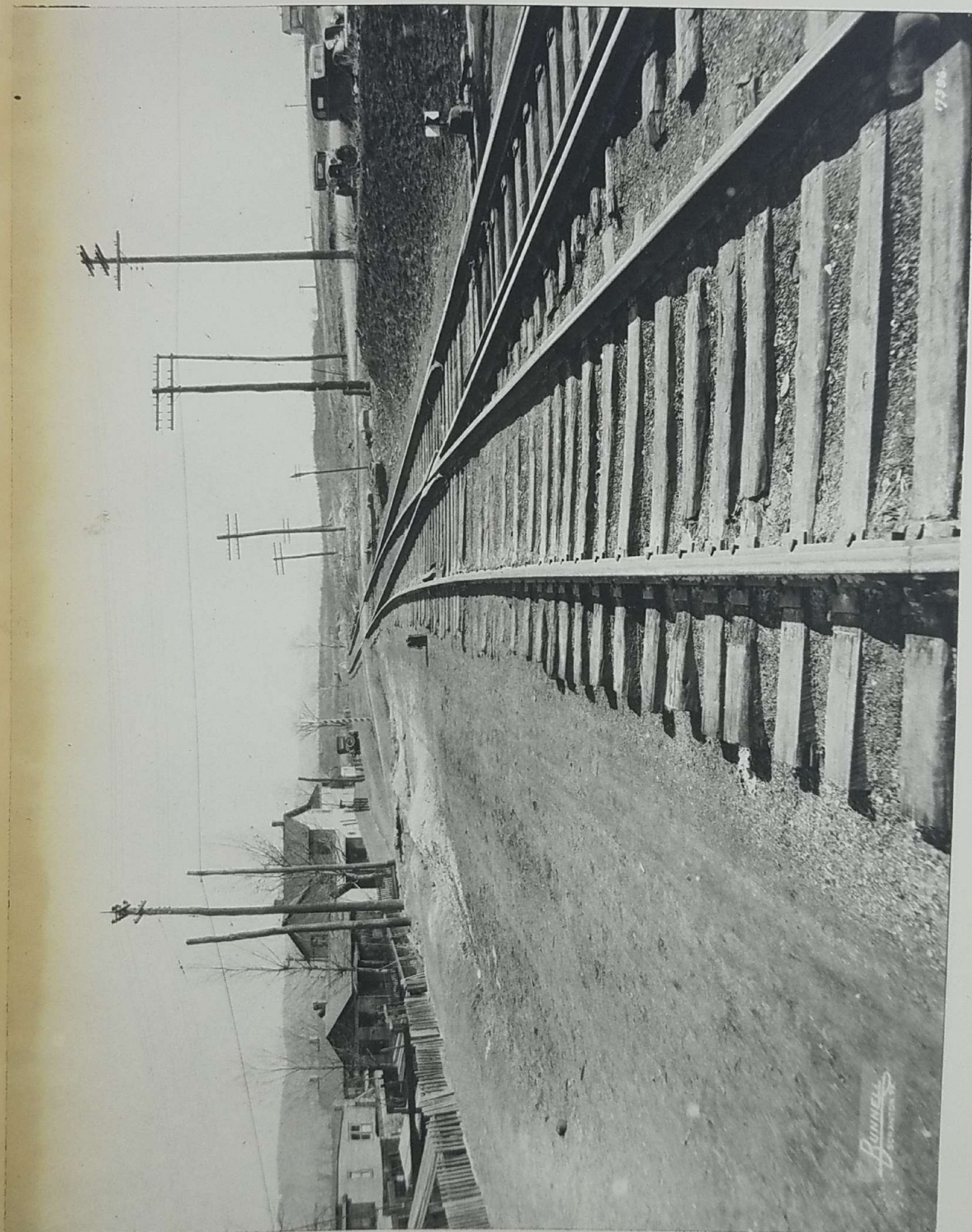
DEFENDANT'S EXHIBIT D



DEFENDANT'S EXHIBIT D



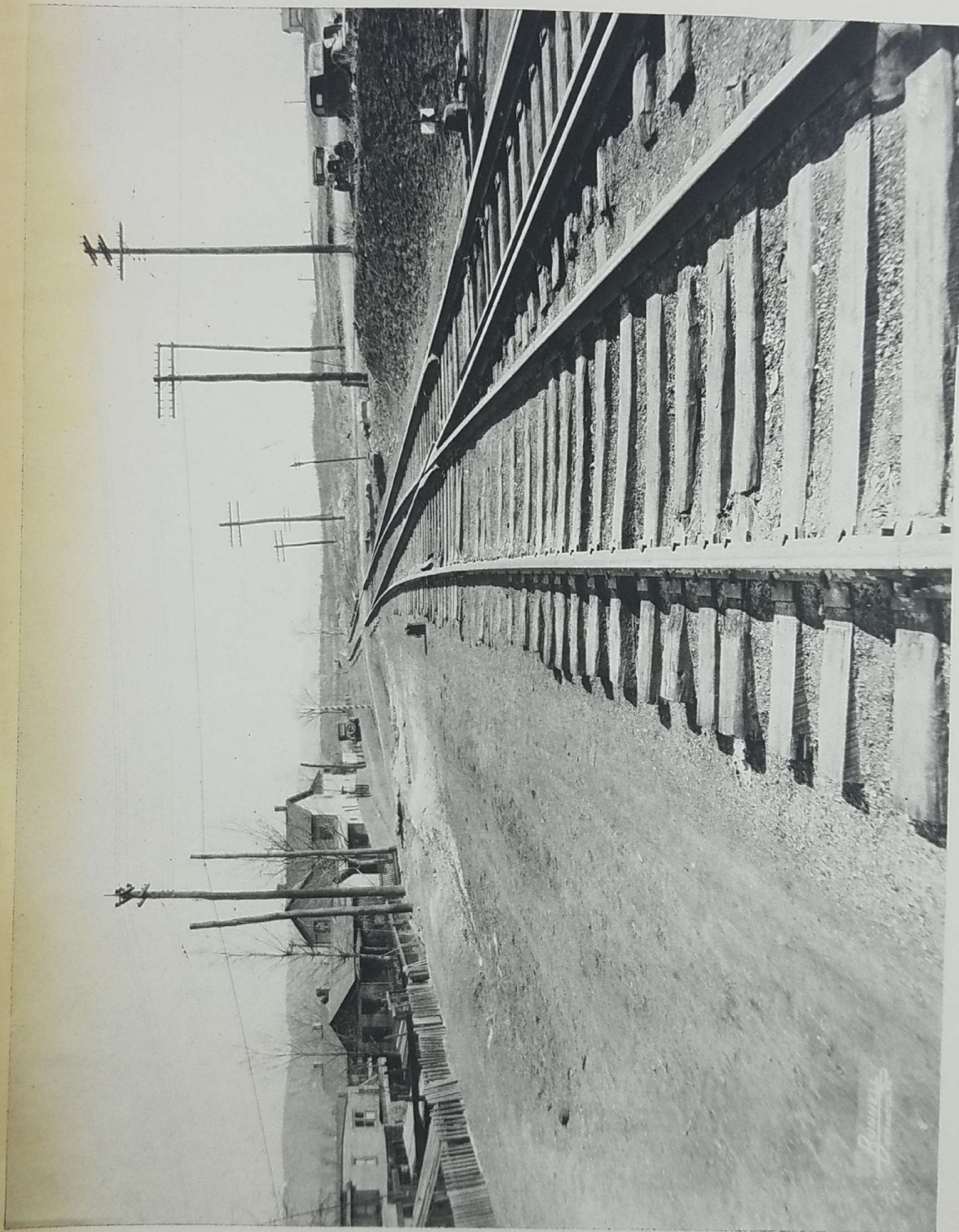
DEFENDANT'S EXHIBIT D



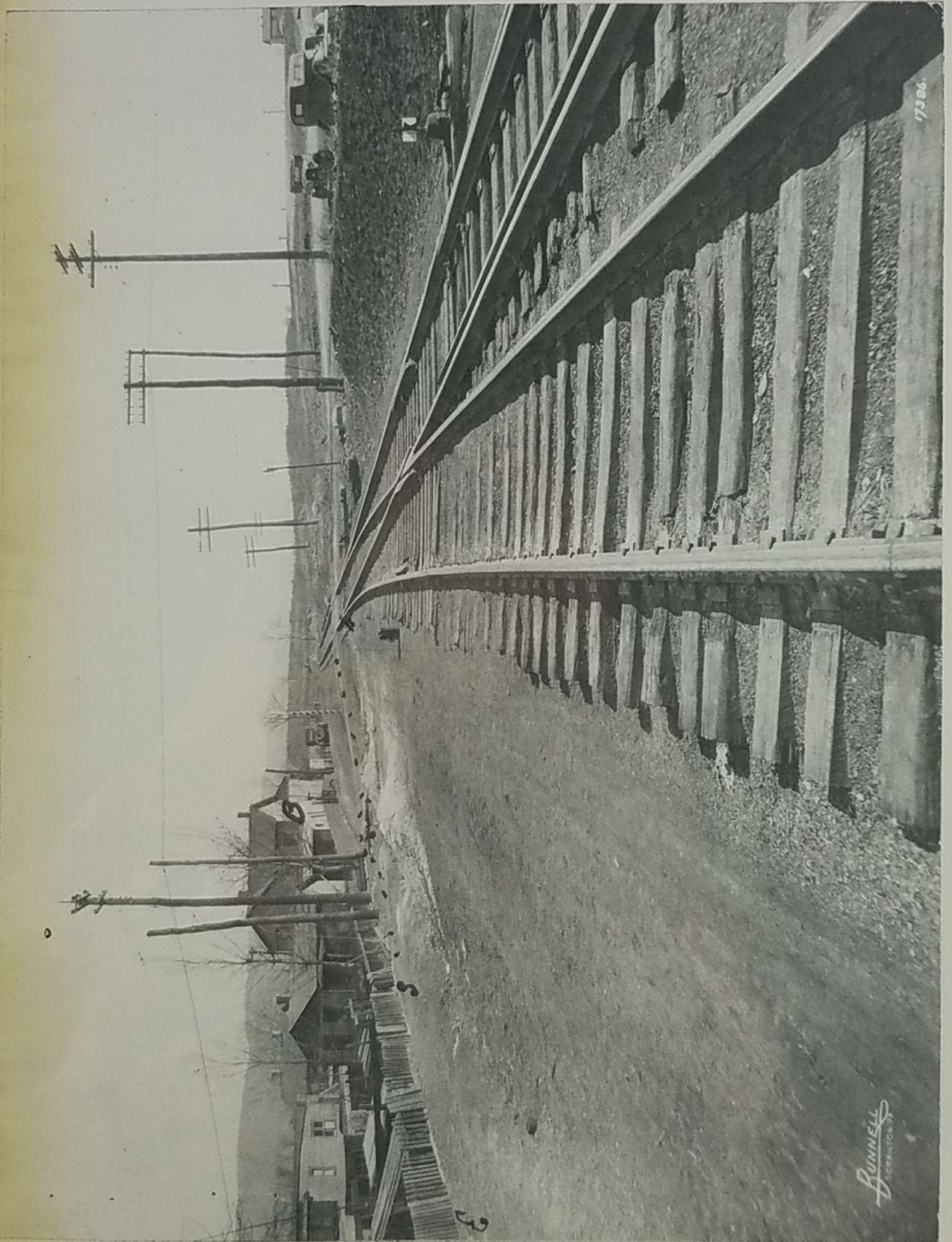
DEFENDANT'S EXHIBIT D



DEFENDANT'S EXHIBIT D



DEFENDANT'S EXHIBIT D



THE CENTRAL RAILROAD CO. OF NEW JERSEY
YARD RECORD CARS REQUIRING SEAL PROTECTION

| DATE | TIME | TRAIN | TRACK | CHECKER |
|---------|--------|-------------------|-------|---------|
| 7/27/34 | 4:30 | 7 from New | | me |
| INITIAL | NUMBER | SEAL RECORD | | |
| ✓ Euc | 76315 | Not in Seal | | |
| ✓ TCX | 2397 | Train 66088-67233 | | |
| ✓ AQ | 17522 | B | | |
| ✓ NRP | 26643 | Euc B90935-36 | | |
| ✓ EPR | 8602 | T | | |
| ✓ Bdx | 928 | | | |
| ✓ BATH | 4172 | | | |
| ✓ AQ | 21639 | B | | |
| ✓ - | 17354 | | | |
| ✓ Euc | 75983 | Euc B77590-89 | | |
| ✓ NRP | 852112 | - C2946-62 | | |
| ✓ TCX | 99222 | | | |
| ✓ PR | 52979 | | | |
| ✓ 978 | 29124 | EPHCO1335-34 | | |
| ✓ 4211 | 99292 | W76 403345-68 | | |
| ✓ Euc | 6037 | NRP 2535-4564 | | |
| ✓ - | 243 | T | | |
| ✓ Euc | 79543 | | | |
| ✓ - | 84036 | Wast 1165-66 | | |
| ✓ - | 10072 | - 1159-60 | | |
| ✓ - | 11170 | Euc M6825-07 | | |
| ✓ Euc | 92607 | - M6824-08 | | |
| ✓ TCX | 7123 | New Retoff - R0 | | |
| ✓ Euc | 109569 | Euc M6832-60 | | |
| ✓ - | 81706 | Waco M4668-53 | | |
| ✓ - | 14489 | B | | |
| ✓ PR | 70897 | T | | |

THE CENTRAL RAILROAD CO. OF NEW JERSEY
YARD RECORD CARS REQUIRING SEAL PROTECTION

| DATE | TIME | TRAIN | TRACK | CHECKER |
|---------|--------|-----------------|-------|---------|
| 7/27/34 | 4:00 | 1 from New | | me |
| INITIAL | NUMBER | SEAL RECORD | | |
| ✓ 272X | 21225 | Not in Seal | | |
| ✓ PR | 86163 | Row M. 1174-73 | | |
| ✓ B74 | 51352 | W4Co 13967-68 | | |
| ✓ NRP | 44011 | Euc X27-X0109 | | |
| ✓ Euc | 35692 | Euc-X3523413-12 | | |
| ✓ AQ | 14145 | B | | |
| ✓ - | 84573 | B | | |
| ✓ - | 21618 | B | | |
| ✓ 272X | 27608 | T | | |
| ✓ AQ | 21780 | B | | |
| ✓ PR | 3113 | T | | |
| ✓ 272X | 29124 | W76 403345-70 | | |
| ✓ NRP | 29124 | W76 403345-70 | | |
| ✓ Euc | 79543 | W76 403345-70 | | |
| ✓ - | 84036 | W76 403345-70 | | |
| ✓ - | 10072 | W76 403345-70 | | |
| ✓ - | 11170 | W76 403345-70 | | |
| ✓ Euc | 92607 | W76 403345-70 | | |
| ✓ TCX | 7123 | W76 403345-70 | | |
| ✓ Euc | 109569 | W76 403345-70 | | |
| ✓ - | 81706 | W76 403345-70 | | |
| ✓ - | 14489 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 403345-70 | | |
| ✓ 272X | 70897 | W76 403345-70 | | |
| ✓ PR | 70897 | W76 4 | | |

DEFENDANT'S EXHIBIT E

2876

Ex. F
U. S. Dist. Court,
S. D. of N. Y.



ERIE RAILROAD COMPANY

C. & E. R. R.

THE N. J. & N. Y. R. R.

N. Y., S. & W. R. R.

TRAIN LIST

DEPARTURE *Brooklyn* TIME *2:29* DATE *7-27-34*
 ARRIVAL *Ashley* TIME *3:52* DATE *7-27-34*
 TRAIN *4* ENG. *2494* CONDUCTOR *F. J. Keller*

| | CAR No. | INITIALS | CONTENTS | Total Wt. of Car and Lading TONS | CARDED | DESTINATION OR JUNCTION POINT |
|----|--------------------|----------|--------------|----------------------------------|--------|-------------------------------|
| 1 | 81706 | NY | Lumber | 43 | | West Point NY |
| 2 | 109569 | E | Wagon | 31 | | Essex NY |
| 3 | 7123 | VTX | mtg | 20 | | Bayonne NJ |
| 4 | 92607 | E | Salt | 54 | | Camden NJ |
| 5 | 11170 | EN | Wagon | 23 | | Wilmington DE |
| 6 | 10072 | - | - | 26 | | Essex NY |
| 7 | 84036 | E | Salt | 41 | | Reading PA |
| 8 | 79543 | - | - | 44 | | Wilmington DE |
| 9 | 243 | EN | oil | 48 | | Camden NJ |
| 10 | 6037 | - | - | 41 | | - |
| 11 | 99292 | EN | varnish | 2 | | Brooklyn NY |
| 12 | 29124 | WFE | Wagon | 30 | | Ashley DE |
| 13 | 52979 | EN | White Lead | 43 | | Newark NJ |
| 14 | 9922 | TX | mtg | | | Bayonne NJ |
| 15 | 85412 | HR | Milk | | | Baltimore MD |
| 16 | 75983 | E | Salt | | | - |
| 17 | 17354 | EN | mtg | | | Ashley DE |
| 18 | 21639 | - | - | | | - |
| 19 | 4172 | ATX | - | | | Mannett NJ |
| 20 | 928 | BAX | - | | | - |
| 21 | 8602 | EX | - | | | Newark NJ |
| 22 | 26643 | HR | Grape Juice | | | Baltimore MD |
| 23 | 17521 | EN | mtg | | | Ashley DE |
| 24 | 2397 | EX | - | | | Bayonne NJ |
| 25 | 76315 | E | String Steel | | | Brooklyn NY |
| 26 | 14489 | EN | mtg | | | Ashley DE |
| 27 | 70897 | EX | - | | | Newark NJ |
| 28 | 21225 | ATX | - | | | Bayonne NJ |
| 29 | 86163 | EN | Carbon | | | West Side Ave NJ |
| 30 | 51356 | Bier | oats | | | Clairfield NJ |
| 31 | 4011 | WST | Burl Bales | | | Newark NJ |
| 32 | 35692 | EN | Mach | | | Port Newark NJ |
| 33 | 14141 | EN | mtg | | | Ashley DE |
| 34 | 84573 | - | - | | | - |
| 35 | 21618 | - | - | | | - |
| 36 | 27608 | ATX | - | | | Bayonne NJ |
| 37 | 21780 | EN | - | | | Ashley DE |
| 38 | 3113 | ATX | - | | | Camden NJ |
| 39 | | | | | | |
| 40 | | | | | | |
| 41 | | | | | | |
| 42 | | | | | | |
| 43 | | | | | | |
| 44 | | | | | | |
| 45 | | | | | | |
| 46 | | | | | | |
| 47 | Ex. | | | | | |
| 48 | U. S. Dist. Court. | | | | | |
| 49 | S. D. of N. Y. | | | | | |
| 50 | OCT 6 1936 | | | | | |

at 7/27

DEFENDANT'S EXHIBIT G

Form 89
M. D.

THE CENTRAL RAILROAD CO. OF NEW JERSEY

Date 7-25-1934 Place Ap

INSPECTOR

INSPECTOR

Form 89
M. D.

THE CENTRAL RAILROAD CO. OF NEW JERSEY

Date 7-22-1934 Place Ap

INSPECTOR

INSPECTOR

| NUMBER | INITIALS | CONDITION | NUMBER | INITIALS | CONDITION |
|--------|----------|------------------|--------|---------------|------------------|
| 3113 | MPJx | T.E.D.C. + Decox | 26643 | U.R.T. N.Y.F. | Savx |
| 21780 | C | B.E. | 8602 | S.E.R. | T.E.D.C. + Decox |
| 229608 | U.R.T. | T.E.D.C. + Decox | 928 | B.A.X. | T.E.D.C. + Decox |
| 21618 | C | B.E. | 4172 | G.A.T.X. | V.O.C. + Decox |
| 84573 | V | gave | 71639 | C | B.E. |
| 44145 | B.E. | Epz | 17334 | 1514 B.K. | Shovel R.2 |
| 35692 | C | B.E. | 75973 | Erice | B.L. |
| 54011 | M.D.T. | Ref. | 85412 | U.R.T. | Ref. |
| 51356 | B.4 | B.L. | 9922 | T.C.X. | T.E.D.C. + Decox |
| 66163 | J.M. | V | 152979 | P.A.R. | B.L. |
| 212354 | T.D.X. | T.E.D.C. + Decox | 29124 | W.F.E. | V |
| 44847 | U.X. | V | 99292 | P.A.R. | V |
| 44479 | C | B.E. | 4037 | U.Y.A.X. | T.E.D.C. + Decox |
| 76315 | U.R.T. | B.L. | 2413 | V | V.O.C. + Decox |
| 23977 | U.R.T. | T.E.D.C. + Decox | 59549 | Erice | B.L. |
| 17551 | C | B.E. | 84036 | V | V |

U.S. District Court
District of Columbia
October 16, 1936

THE CENTRAL RAILROAD CO. OF NEW JERSEY

Date 7.27.1934 Place anyINSPECTOR Shaworth INSPECTOR Shaworth

| NUMBER | INITIALS | CONDITION |
|----------------------------|----------|-----------------|
| 10052 | C | B.S. |
| 11170 | ✓ | |
| 42607 | Eme | B.S. |
| 7123 | W.P. | Doc on Sam |
| 10950 | Eme | B.S. |
| 8170 | W.C. | ✓ |
| <u>Shaworth + Shaworth</u> | | |
| 79570 | Eme | B.S. |
| 89177 | ✓ | ✓ |
| 70940 | S.T. | T.E. Doc on Sam |
| 745 | Bar | V. Doc on Sam |
| 14078 | C | B.E. |
| 114152 | Eme | B.S. |
| 45220 | Det | ✓ |
| 2695 | S.E.P. | T.E. Doc on Sam |
| 1629 | W.P. | ✓ Doc on Sam |

THE CENTRAL RAILROAD CO. OF NEW JERSEY

Date 2.28.1934 Place anyINSPECTOR Shaworth INSPECTOR Shaworth

| NUMBER | INITIALS | CONDITION |
|--------|----------|---------------------------------|
| 263 | W.P. | T.E. Doc on Sam |
| 1352 | R.T.E. | ✓ Doc on Sam |
| 47511 | S.T. | B.S. |
| 21023 | C | B.E. |
| 1548 | W.P. | Doc on Sam |
| 92354 | Eme | B.S. |
| 285 | W.P. | T.E. Doc on Sam |
| 1455 | G.P. | T.E. Doc on Sam |
| 57611 | W.T. | ✓ Doc on Sam |
| 54446 | W.P. | B.S. 13.9. 5.6. 7.4. 13.9. 9.7. |
| 13487 | R.D. | B.E. 3.10. 10.3. 3.0. 10.3. |
| 3273 | ✓ | ✓ |
| 85509 | M.P. | B.S. 15.0. High Sam |
| 13106 | Shaworth | B.S. |
| 52646 | W.T. | T.E. Doc on Sam |
| 90662 | Eme | B.S. |
| 54494 | W.T. | T.E. Doc on Sam |

DEFENDANT'S EXHIBIT G-Continued

2376

467

2376

DEFENDANT'S EXHIBIT H


**ERIE RAIL
CAR INSPECTOR'S**
Place
Commenced
InspectionDate
Completed
Inspection

M.

M.

| CAR INITIAL | CAR NUMBER | CLASS | LOAD OR EMPTY | DISP'N OR SHOP |
|----------------|---------------|-------|---------------------|----------------------|
| LV | 29425 | tz | L | |
| L | 22672 | AN | L | |
| | 97190 | | | |
| | 104746 | | | |
| | 87200 | AN | L | |
| | 105630 | AN | L | |
| | 22953 | AN | L | |
| | 67051 | | | |
| | 93427 | AN | C | |
| | 86105 | | | |

Place
Commenced
InspectionDate
Completed
Inspection

M.

M.

| | | | | |
|------------------------------|--------|----|---|--|
| C | 105630 | AN | L | |
| Ashley special | | | | |
| Departed 12 10 am | | | | |
| 38 Cars and 38 BKs | | | | |
| train ok | | | | |
| Conductor Keller Aug 21 1997 | | | | |
| O'Houlihan Cooper House | | | | |

So State: When damage is due to Derailment, Cornering, Sideswiping, Telescoping,
or other Handling Line Responsibility Conditions.
Form 1370-B 4M-1-34

**ROAD CO.
ORIGINAL RECORD**
Train
No.

Arrived

From

Track No.

No. Cars

| CONDITION DEFECTS REMARKS |
|--|
| OK Out of shop wheel rim set of Gauge 22 see 2 door. fine coal |
| Critch |
| OK Shop Aug 22 |
| Shapley |
| OK Shop 22 Aug 22 door fine coal |
| Critch |
| Close 2 side door |

Train
No.

Arrived

From

Car Inspector

Track No.

No. Cars

| |
|---|
| Bepkoet A. 11/4. |
| All other cars inspected in train yard on this date |
| O'Houlihan J. Book |

I certify that the above Record
made by me is correct.

Car Inspector

GEORGETOWN LAW SCHOOL
WASHINGTON, D. C.

HUGH J. FEGAN
ASSISTANT DEAN
PROFESSOR OF LAW

November 10, 1938.

November 12, 1938.

Hon. Charles Elmore Cropley,
Clerk, Supreme Court of the United States,
Washington, D. C.
Hugh J. Fegan, Esq.,
Washington, D. C.



Dear Mr. Fegan:

I regret to advise you that my supply of
copies of the record and briefs in the case of Erie
R.R. Co. v. Tompkins, No. 367, October Term, 1937,
is exhausted. 2. Ruhlin v. New York Life Ins. Co., No. 596,
decided May 2, 1938.

Under separate cover I am sending you a set of
all the available papers in the case of Ruhlin v.
New York Life Insurance Co., No. 596, October Term, 1937.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Assistant.

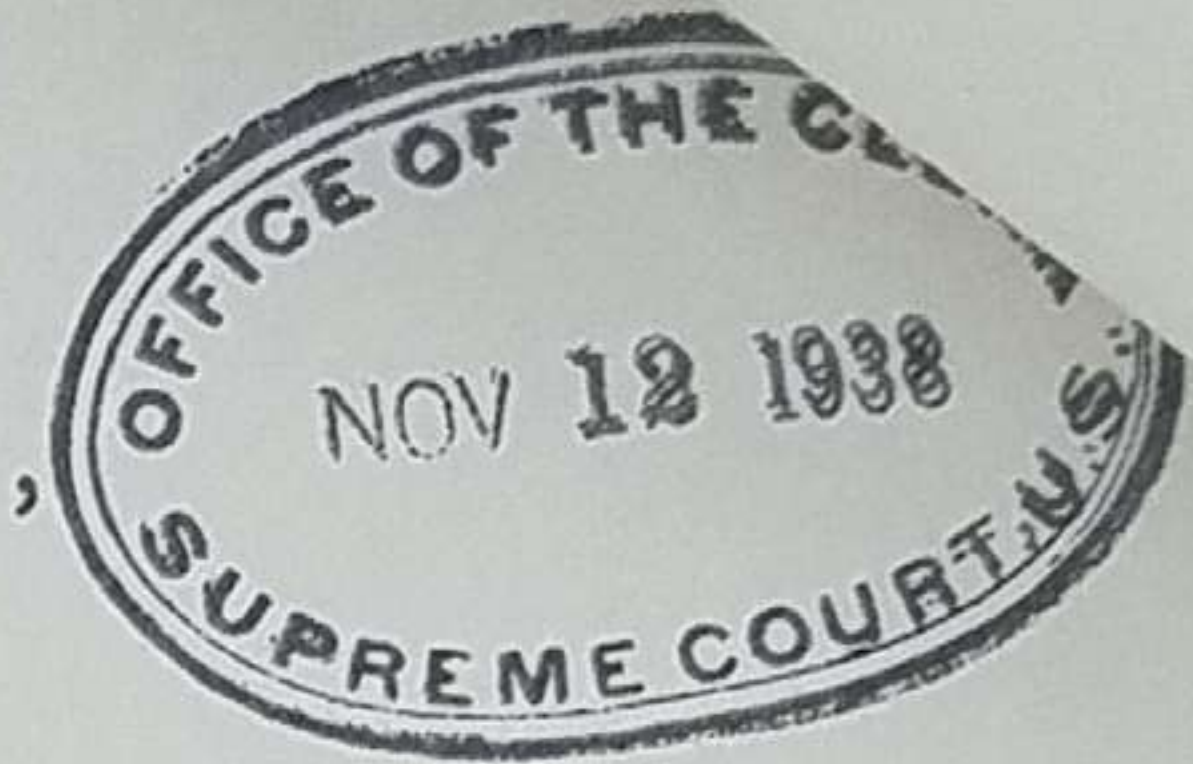
EPC-W

GEORGETOWN LAW SCHOOL
WASHINGTON, D. C.

HUGH J. FEGAN
ASSISTANT DEAN
PROFESSOR OF LAW

November 10,

Hon. Charles Elmore Cropley,
Clerk, Supreme Court of the United States,
Washington, D.C.



Dear Mr. Cropley:-

If consistent, would it be possible for me to obtain, in connection with my work here, a copy of the briefs and record in the following cases:-

1. Erie R. Co. v. Tompkins, No. 367, decided April 25, 1938.
2. Ruhlin v. New York Life Ins. Co., No. 596, decided May 2, 1938.

Very respectfully yours,

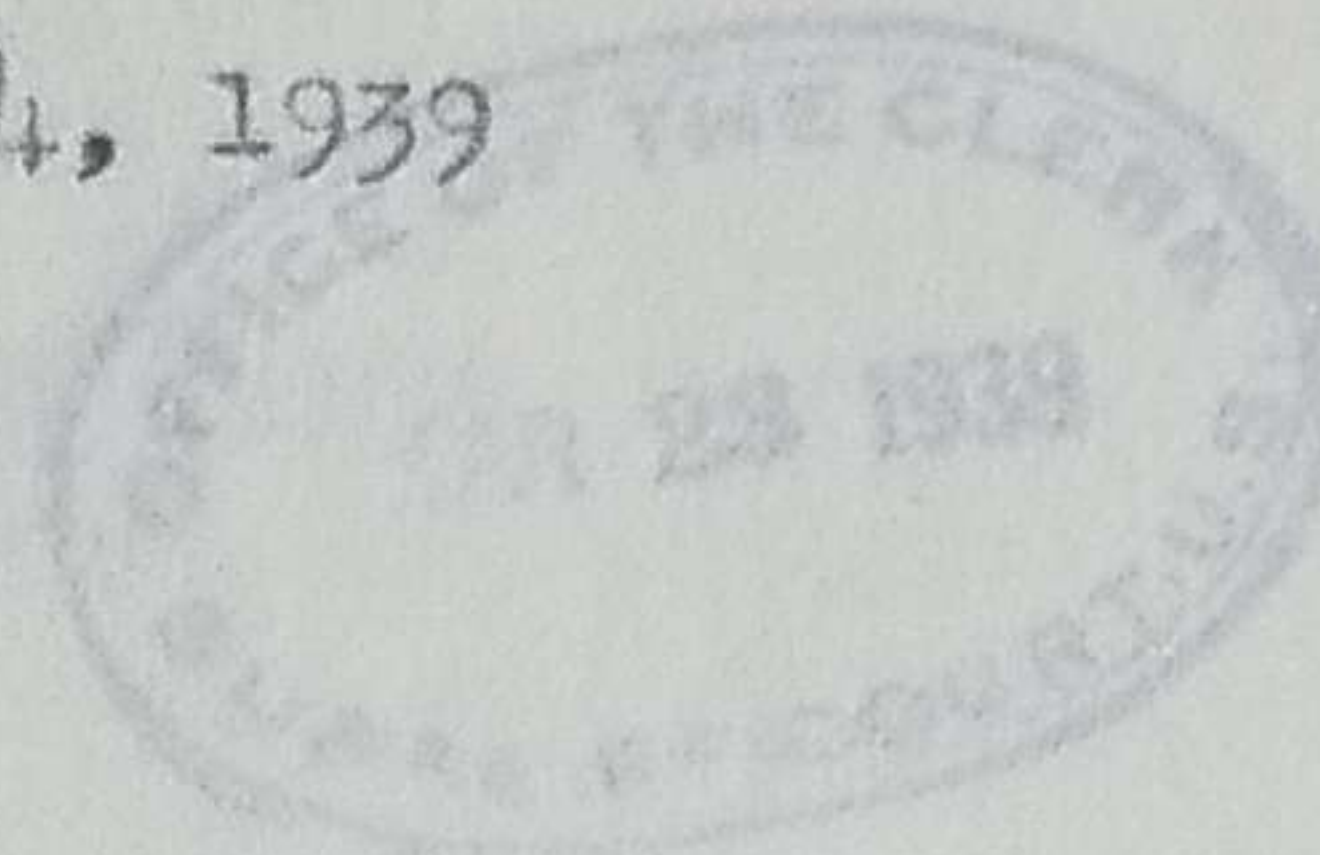
Hugh J. Fegan

UNITED STATES DISTRICT JUDGES CHAMBERS
NORTHERN DISTRICT OF ALABAMA
BIRMINGHAM, ALABAMA

THOMAS A. MURPHY
DISTRICT JUDGE

March 24, 1939

March 22, 1939



367
37

Herbert R. Maulitz, Esq.
Clerk, United States Supreme Court
Birmingham, Alabama
Washington, D. C.

Dear Sir:

Replying to your letter of March 22d, you would inform me whether or not there was an application for rehearing was filed in this Court in the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937.

Thank you very much for your attention to this matter.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By

Herbert R. Maulitz

EPC:IM

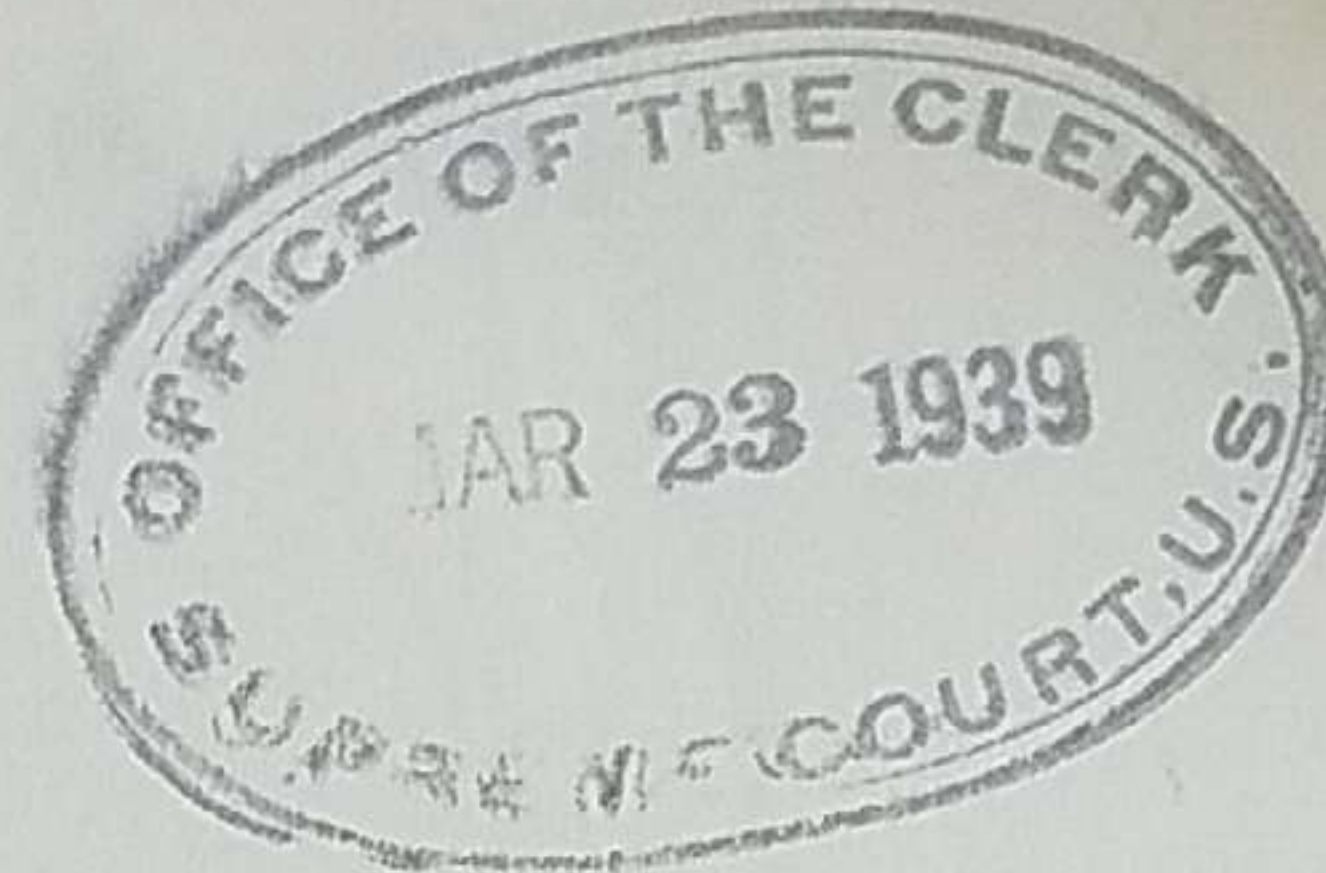
Herbert R. Maulitz
Assistant Secretary

HEM:x

UNITED STATES DISTRICT JUDGE'S CHAMBERS
NORTHERN DISTRICT OF ALABAMA
BIRMINGHAM, ALABAMA

THOMAS A. MURPHREE
DISTRICT JUDGE

March 22, 1939



367
37

Charles Elmore Cropley, Esq.
Clerk, United States Supreme Court
Supreme Court Building
Washington, D. C.

Dear Sir:

W
to W
L

4-5-1939

I would appreciate it very much if you would inform me whether or not there was an application for rehearing, and if so what action was taken thereupon, in the case of Erie Railroad Co. v. Tompkins, No. 367, decided April 25, 1938, by the Supreme Court.

Thank you very much for your attention to this matter.

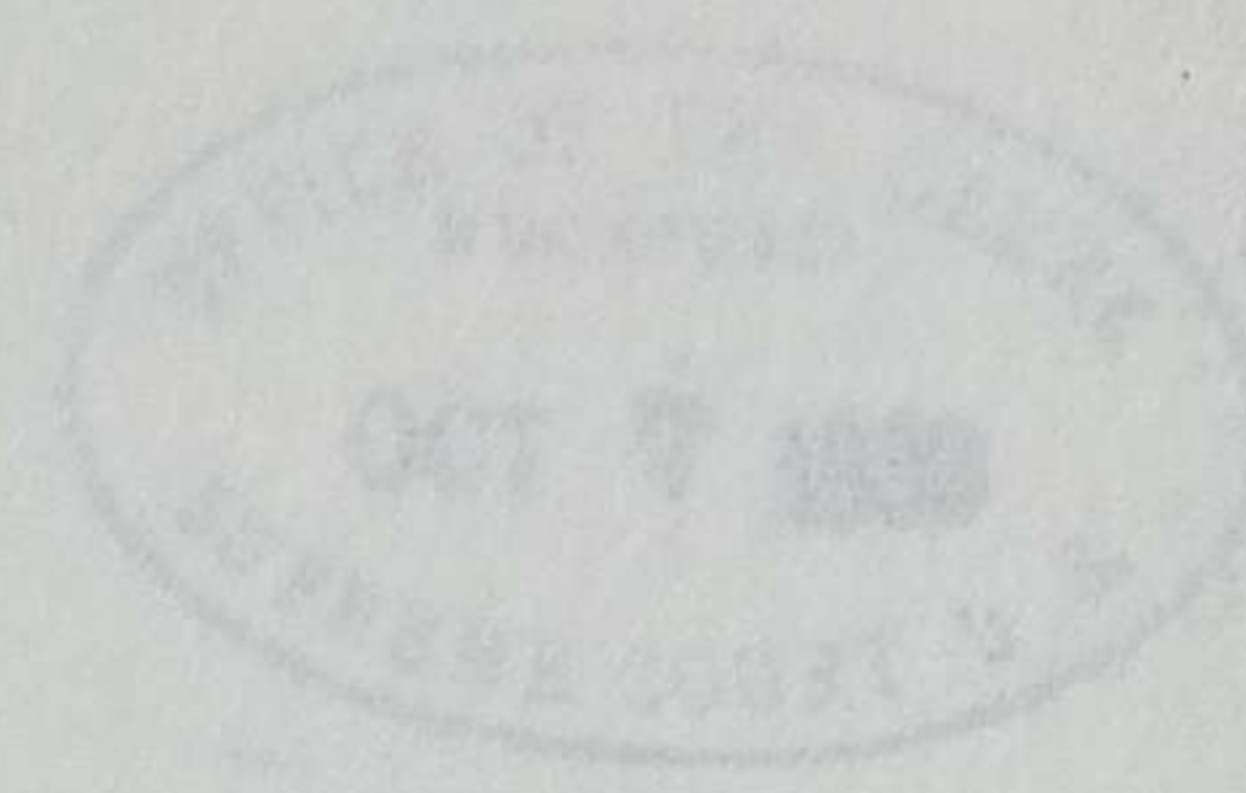
Yours very truly,

Herbert R. Maulitz

Herbert R. Maulitz
Secretary

HRM:x

BERNARD G. NEMEROFF
COUNSELOR AT LAW
22 BROADWAY
NEW YORK
WH 5-5077



October 8, 1938.

Bernard G. Nemeroff, Esquire,

New York City. Supreme Court
of the United States

My dear Mr. Nemeroff:

I have received your letter of October sixth
respecting the costs due this office by the respondent
in the case of Erie Railroad Company v. Tompkins, No. 367
of October Term, 1937.

On yesterday I received an explicit letter from
Mr. Rees with which he forwarded a check of his law firm
for \$15.55 in payment of these costs. The amount of the
check has been credited and the case closed on my books.

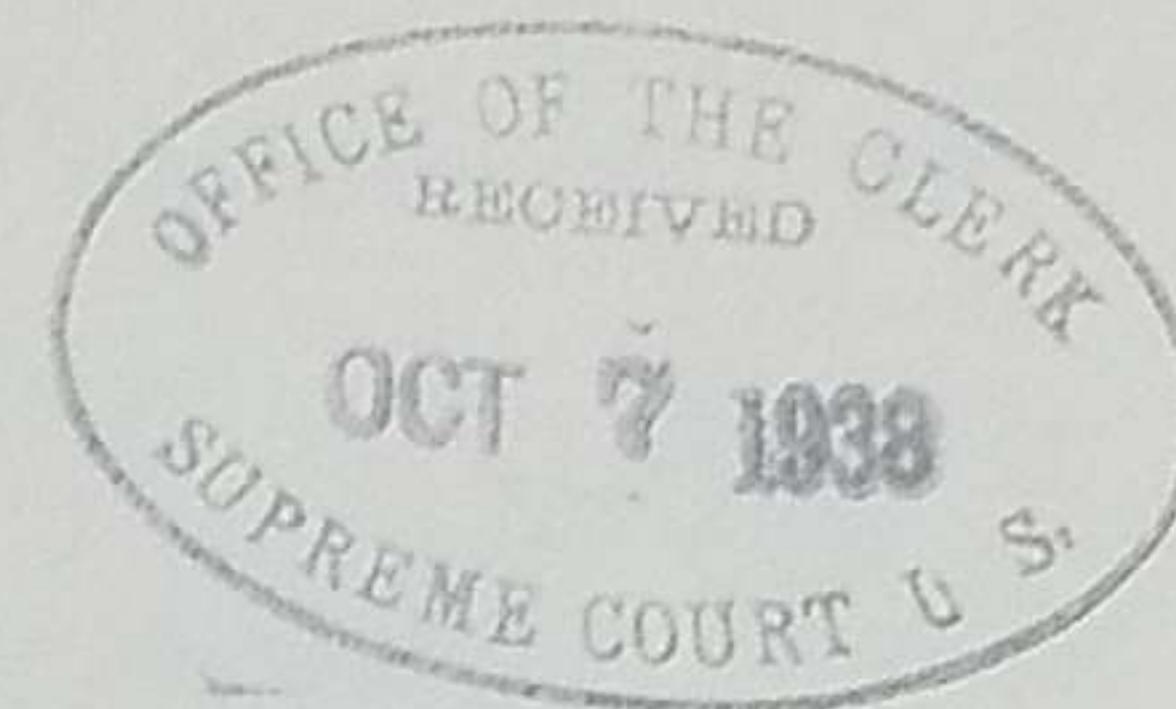
Yours very sincerely,

I am very sorry for Clerk. inconvenience this
may have caused you.

Yours very sincerely,

Bernard G. Nemeroff
BERNARD G. NEMEROFF

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
—
WHITEHALL 4-5077



367
37

October 6th, 1938

Clerk of the Supreme Court
of the United States
Washington, D. C.

Dear Sir:

Your letter of October 5th concerning the costs of the respondent in the amount of \$15.55 in the case of Erie Railroad Company v. Tompkins, #367, October Term 1937 received and contents noted.

Your failure to receive this check until now was due to the fact that your letters had been appropriately addressed to Mr. Rees but Mr. Rees has not actively taken part in the prosecution of this case since the oral argument in the Supreme Court and Mr. Rees apparently overlooked calling this matter to my attention. However, immediately upon receipt of your letter I made the appropriate arrangements with Mr. Rees and am informed by his office that his check in the sum of \$15.55 is being forwarded to you today.

I am very sorry for any inconvenience this may have caused you.

Yours very sincerely,

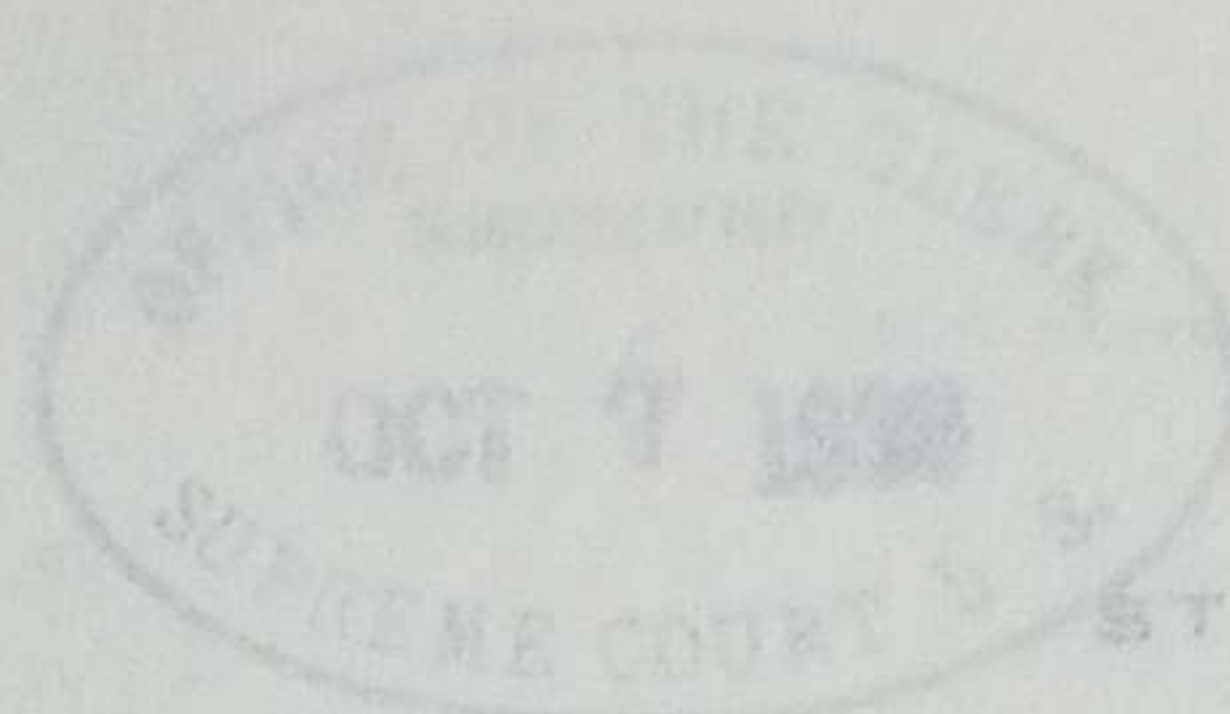
Bernard G. Nemeroff
BERNARD G. NEMEROFF

BK:MB

EVANS

COUNSELLORS AT LAW

WALTER C. EVANS
FRED H. REES
ALEXANDER J. COURTNEY
ALEXANDER J. COURTNEY, JR.
WILLIAM J. WILLIAMS
WILLIAM J. WALSH
DONALD J. REYER



ST. PAUL BUILDING

220 BROADWAY

NEW YORK

October 7, 1938

October 6, 1938

Fred H. Rees, Esquire

New York City

Department of the United States

Washington, D.C.

My dear Mr. Rees:

My dear Mr. Rees:

I have today received your letter of October sixth and the enclosed check of your law firm payable to my order for \$15.55 in settlement of costs due by the respondent in the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937. The amount of your check has been credited and the case closed on my books.

Thank you for your prompt and explicit letter in this matter. I was strongly inclined to the presumption that you had referred the correspondence respecting these costs to Mr. Nemeroff, as that was an entirely appropriate course for you to pursue, but the file in the case did not disclose that fact and I was reluctant to have a reflection of neglect cast upon you when the non-payment of costs came to the attention of the Court. I should have dealt with Mr. Nemeroff respecting the costs but for the fact that he is not a member of this bar. Consequently, the accepted custom required me to look to the counsel of record as the person responsible for settlement of the costs due or an explanation of failure to make such settlement.

The matter is now satisfactorily closed on the Court's books and your own position is made entirely clear by your letter. I regret the annoyance which the incident has caused you growing out of circumstances which you, in the normal course of business affairs, would have no reason to contemplate.

I did not think that there was any necessity to reply to your correspondence because Yours very sincerely, Nemeroff had attended to the matter and I wish to assure you that no discourtesy on my part was intended. However, I trust that the explanation I have made will lead you to feel that the matter was not ignored by me and that I am sorry that the situation created has caused you this inconvenience.

CEC:IM

Very sincerely yours,

EVANS & REES

THREE

ENC.

Fred H. Rees

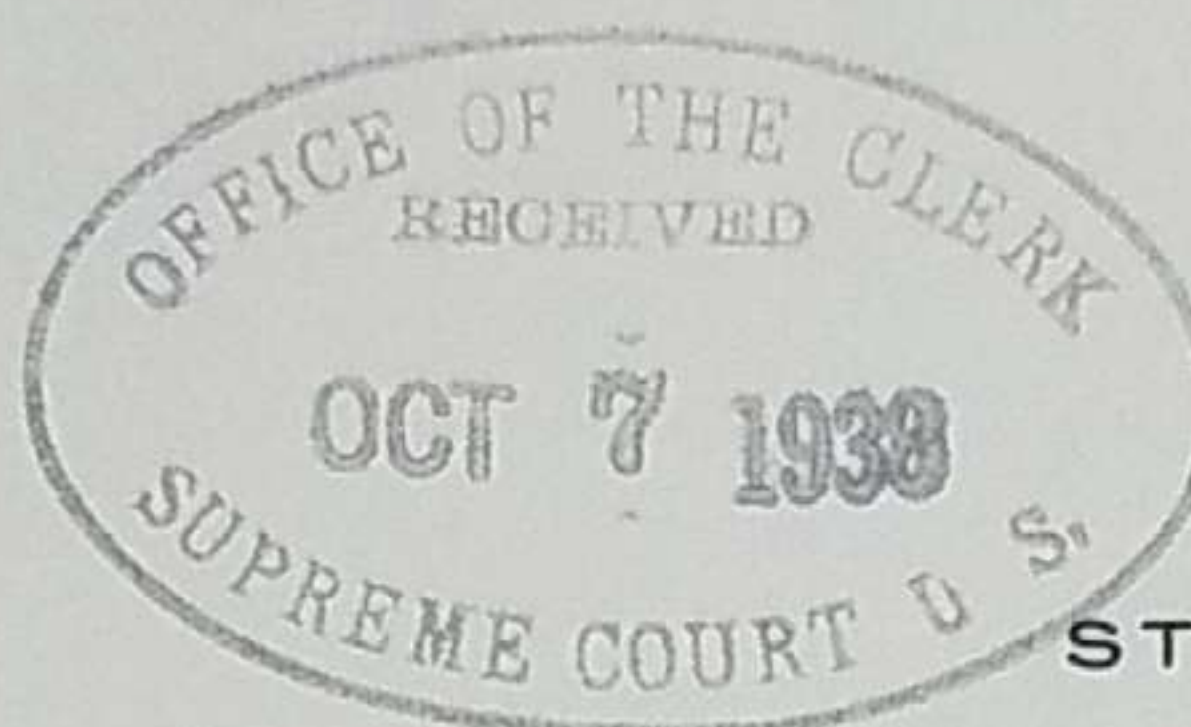
EVANS & REES

COUNSELORS AT LAW

WALTER G. EVANS
FRED H. REES
ALEXANDER A. GOURLAY
ALEXANDER ORR, JR.
H. BRADLEY MOORE

WILLIAM H. WILLIAMSON

WILLIAM G. WALSH
DONALD I. PEYSER



PHONE CORTLANDT 7-8271

ST. PAUL BUILDING

220 BROADWAY

NEW YORK

October 6, 1938

367
37

Hon. Charles E. Cropley
Clerk Supreme Court of the United States
Washington, D.C.

My dear Mr. Cropley:

I am receipt of your letter of October 5, 1938, relative to the costs in the case of Erie Railroad Company against Tompkins, #367, October Term 1937, in which I presented oral argument as counsel of record for the respondent. I enclose herewith the check of my firm in the sum of \$15.55, the amount involved.

I sincerely regret the delay and misunderstanding which has developed in connection with the matter of the costs and wish to make it clear that Mr. Bernard G. Nemeroff, who is the attorney of record for Mr. Tompkins, agreed that all costs in connection with this case would be borne by him, and upon receipt of your letter of May 2nd I immediately had my office communicate with Mr. Nemeroff with instructions that the matter of costs in the Supreme Court be attended to at once.

Mr. Walsh of my office, who spoke to Mr. Nemeroff, assured me that the costs would be paid by Mr. Nemeroff at once. In the month of June, when your second letter came, I was surprised to note that Mr. Nemeroff had not attended to the matter and again I instructed Mr. Walsh to take it up with him. During the summer I was away and upon returning to the office after Labor Day I again was at a complete loss when I understood from your correspondence that the matter had not been attended to.

In view of the fact that I cannot seem to get a response from Mr. Nemeroff, and because I do not wish it to appear that I am ignoring your correspondence, I am sending my firm's check so that the docket may be properly arranged.

I did not think that there was any necessity to reply to your correspondence because I firmly believed that Mr. Nemerhoff had attended to the matter and I wish to assure you that no discourtesy on my part was intended. However, I trust that the explanation I have made will lead you to feel that the matter was not ignored by me and that I am sorry that the situation created has caused you this inconvenience.

Very sincerely yours,

EVANS & REES

FHR:TW

encl.

October 5, 1938

Fred H. Rees, Esquire
220 Broadway
New York City

My dear Mr. Rees:

The file in the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937, in which you presented oral argument as counsel of record for the respondent, does not include any response from you to four letters written to you respecting the costs due by your client to this office.

As Mr. Bernard G. Memeroff, who conducted a majority of the correspondence on behalf of the respondent, is not a member of the bar of this Court, the communications respecting the costs due were addressed to you as counsel of record and consequently the one responsible for the orderly conduct of the case in this Court. I am writing to Mr. Memeroff today and attach hereto a copy of that letter which makes it unnecessary to recite its contents here.

Prior to making a report to the Court in the near future respecting this case, I trust that your response to my communications dated May 2d, June 16th, August 8th and September 2d will be received in order to avoid an application of the procedure adopted by the Court in "In the Matter of Ralph C. Davis", 289 U.S. page 704, where the circumstances were parallel to those in your case.

Yours very sincerely,

Clerk.

CEC:IM
Encl.

5

content to have the file in your October 5, 1938 its present state. I shall be glad, therefore, to receive your prompt reply and payment of the costs due or an adequate explanation of

Bernard G. Nemeroff, Esquire

32 Broadway
New York City

Yours very sincerely,

My dear Mr. Nemeroff:

Following the decision of this Court the costs in the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937, were taxed in the usual manner and show the amount of \$15.55, representing the costs of the respondent in this Court, to be due and payable to this office. As you have not been admitted to practice in this Court, correspondence respecting these costs due was addressed to Mr. Fred H. Rees who presented the oral argument for the respondent.

An examination of my files shows that four letters, dated May 2d, June 16th, August 8th and September 2d were written to Mr. Rees calling his attention to the account and requesting payment. No response to these letters has been received from Mr. Rees or from any of the counsel for the respondent associated with him in the case.

It is my desire to avoid embarrassment to counsel in this case growing out of the neglect to respond to my communications and I am therefore writing to you and sending a copy of my letter to Mr. Rees in order that the matter may receive appropriate attention.

The failure of counsel to respond to communications received from the Clerk respecting the business of the Court has been made the basis for its action and your attention is called to "In the Matter of Ralph C. Davis", 289 U.S., page 704, where circumstances similar to those in your case were dealt with by the Court.

In the near future I shall have to make a report to the Court respecting cases in which costs are due and remain unpaid and I am sure that you and Mr. Rees will not be

content to have the file in your case remain in its present state. I shall be glad, therefore, to receive your prompt reply and payment of the costs due or an adequate explanation of the failure to make such payment.

Yours very sincerely,

Clerk.

CEC:IM

1

4

September 2, 1938

Fred H. Rees, Esq.
New York City

Dear Sir:

Under dates of May 2nd, June 16th and August 8th this office wrote to you with reference to the unpaid costs amounting to \$15.55 in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937.

It is requested that you give this matter your immediate attention either by forwarding a check for the amount or give your reasons for not paying the same.

Letters from this office should be acknowledged.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By

Deputy.

HWB:DR

1

3

August 8, 1938.

Fred H. Rees, Esq.,

New York, N.Y.

Dear Sir:

Under dates of May 2nd and June 16th I wrote you and called your attention to the fact that the costs of your client in this Court in the case of Erie R. R. Co. v. Harry J. Hopkins, No. 367, October Term, 1937, amounted to \$15.55. These costs should be paid into this Court.

Kindly give this matter your early attention.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Deputy.

HWB-W

2
June 16, 1938.

Fred H. Rees, Esq.,
New York, N.Y.

Dear Sir:

Under date of May 2nd I wrote you, advising you of the issuance of the mandate of this Court in the case of Erie Railroad Company v. Harry J. Tompkins, No. 367, October Term, 1937, and requested that you send check for the sum of \$15.55, the same to cover the costs of your client in this Court.

Kindly see that a check is sent at an early date.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Deputy.

HWB-W

①

1

May 2, 1938.

Fred H. Rees, Esq.,
New York, N.Y.

Dear Sir:

The mandate of this Court in the case of Erie Railroad Company v. Harry J. Tompkins, No. 367, October Term, 1937, issues today to the Clerk of the U. S. Circuit Court of Appeals for the Second Circuit. It directs that court to issue execution against your client for the taxed costs of the petitioner in this Court and the attorney's docket fee of \$20, or a total of \$871.60. This amount must be paid into that court.

The costs of your client in this Court amount to \$15.55. Kindly see that a check for this amount is sent at an early date in order that I may close the case on my books.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Deputy.

11111-11

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK

WHITELAND 4-5077

September 13, 1938

Bernard G. Nemeroff, Esq.

New York City.

Re: Erie Railroad Co. v. Tompkins
No. 367, October Term, 1937

Dear Sir:

Replying to your letter of September 12th you are advised that all of the proceedings which have transpired in the Circuit Court of Appeals subsequent to this Court's decision should be certified by the Clerk of that Court. Inasmuch as the record upon which the case was heard in this Court was the record of the Circuit Court of Appeals, I can see no reason why the Clerk of that Court may not also certify that record.

Yours truly,

Would you CHARLES ELMORE CROPLEY, Clerk
not it is necessary to have the Clerk of the Circuit
Court of Appeals certify the record of the proceedings
subsequent to the disposition of this case by the Supreme
Court. That is, the second opinion of the Circuit Court
of Appeals, the order denying a rehearing thereon and
EPC:IM judgment thereon.

Very truly yours,

Bgn

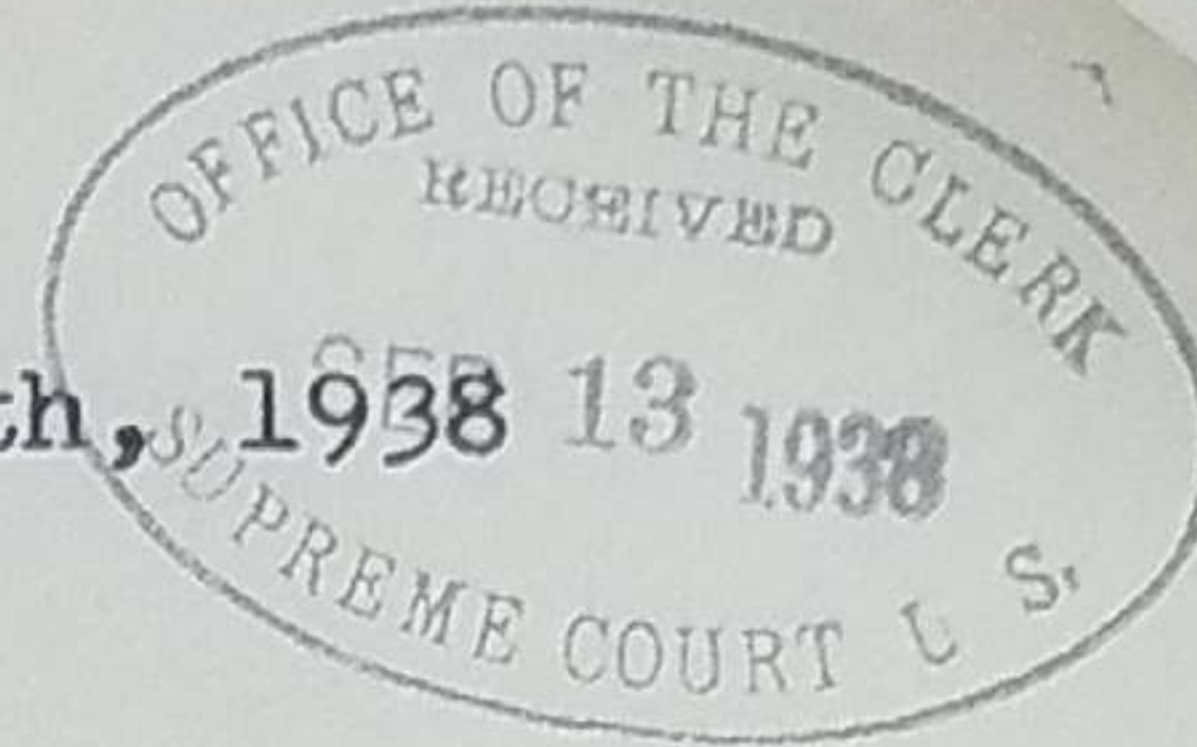
BERNARD G. NEMEROFF

BK:MB

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK

WHITEHALL 4-5077

September 12th, 1938 13 1938



Office of the Clerk
Supreme Court of the United States
Washington, D.C.

Dear Sir:

Re: Erie Railroad Co.
Vs: Tompkins

I have at hand your answer under date of September 10th in reply to my inquiry concerning the proper procedure in filing a petition for certiorari in forma pauperis in the case of Erie Railroad Co. v. Tompkins, #367, October Term 1937.

I have available in my possession a copy of the record upon which this case was already before the Supreme Court. Of course, it would be impossible to have this record certified by the Clerk of the Circuit Court of Appeals. Will you please advise me whether it would be in order to forward this Supreme Court record uncertified in lieu of a certified copy of the record used on the first appeal in the Circuit Court of Appeals.

Would you also please advise me whether or not it is necessary to have the Clerk of the Circuit Court of Appeals certify the record of the proceedings subsequent to the disposition of this case by the Supreme Court. That is, the second opinion of the Circuit Court of Appeals, the order denying a rehearing thereon and the judgment thereon.

Very truly yours,

A handwritten signature in dark ink, appearing to be "Bgn", written over the typed name.

BERNARD G. NEMEROFF

BK:MB

BERNARD G. NEMEROFF
COUNSELLOR AT LAW
32 BROADWAY
NEW YORK
RECEIVED
SEP 23 1938

September 22, 1938

Office of the Clerk of the Supreme Court
of the United States
Bernard G. Nemeroff, Esq.

New York City

Re: Erie v. Tompkins

367, October Term 1937

Dear Sir:

Dear Sir: As I have advised you in correspondence recently had with you, I intend to apply for a writ of certiorari. Replying to your letter of September 21st you, in forma pauperis. I am advised by the Clerk of the are advised that upon receipt of the certified record the record which he certifies to the Supreme Court for in the case of Erie Railroad Co. v. Tompkins, No. 367, of the opinion of the Supreme Court. October Term, 1937, a copy of the opinion of this Court will be appended to the end of the appellate proceedings. Will you please advise me what arrangements, reme Court of a copy of its opinion. That is, is it contained in the record Yours truly, separately, if at all. This information is necessary to me in the preparation of the petition. CHARLES ELMORE CROPLEY, Clerk of this Court, but do not at the present time know whether to refer to it By being contained in the record, submitted separately or make no reference at all as to EPC:IM location in the record. Assistant

Very truly yours,

Bernard G. Nemeroff

BERNARD G. NEMEROFF

BK:MB

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
—
WHITEHALL 4-5077

367/37
September 21st, 1937

Office of the Clerk of the Supreme Court
of the United States
Washington, D.C.

Re: Erie v. Tompkins
367, October Term 1937

Dear Sir:

As I have advised you in correspondence recently had with you, I intend to apply for a writ of certiorari on behalf of my client, Harry J. Tompkins, in forma pauperis. I am advised by the Clerk of the Circuit Court of Appeals for the Second Circuit that the record which he certifies to the Supreme Court for that purpose, will not, of course, not contain a copy of the opinion of the Supreme Court.

Will you please advise me what arrangements, if any, are made concerning the furnishing to the Supreme Court of a copy of its opinion. That is, is it contained in the record or submitted separately, if at all. This information is necessary to me in the preparation of the petition wherein I refer to the opinion of this Court, but do not at the present time know whether to refer to it as being contained in the record, submitted separately or make no reference at all as to its location in the record.

Very truly yours,

Bernard G. Nemeroff

BERNARD G. NEMEROFF

BK:MB

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-8077

September 10, 1938

Bernard G. Nemeroff, Esq.
New York City

Clerk of the United States Supreme Court
Washington, D.C.
Dear Sir:

In reply to your letter of September 8th you are advised that my supply of copies of the record in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937, is exhausted.

If you anticipate proceeding in forma pauperis in this Court it will be necessary that you file a typewritten motion for leave to proceed in forma pauperis supported by the affidavit required by statute, together with one typewritten petition and one certified record.

In my opinion it would be well to have the entire record before this court; or in other words, the record upon which this case was before this Court during the past term as supplemented by the proceedings which have transpired since that time.

In the event that further records are required to be filed, I would appreciate your informing me whether a copy of the record is required or whether it would be preferable to file copies of the record previously submitted in the United States Supreme Court.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By

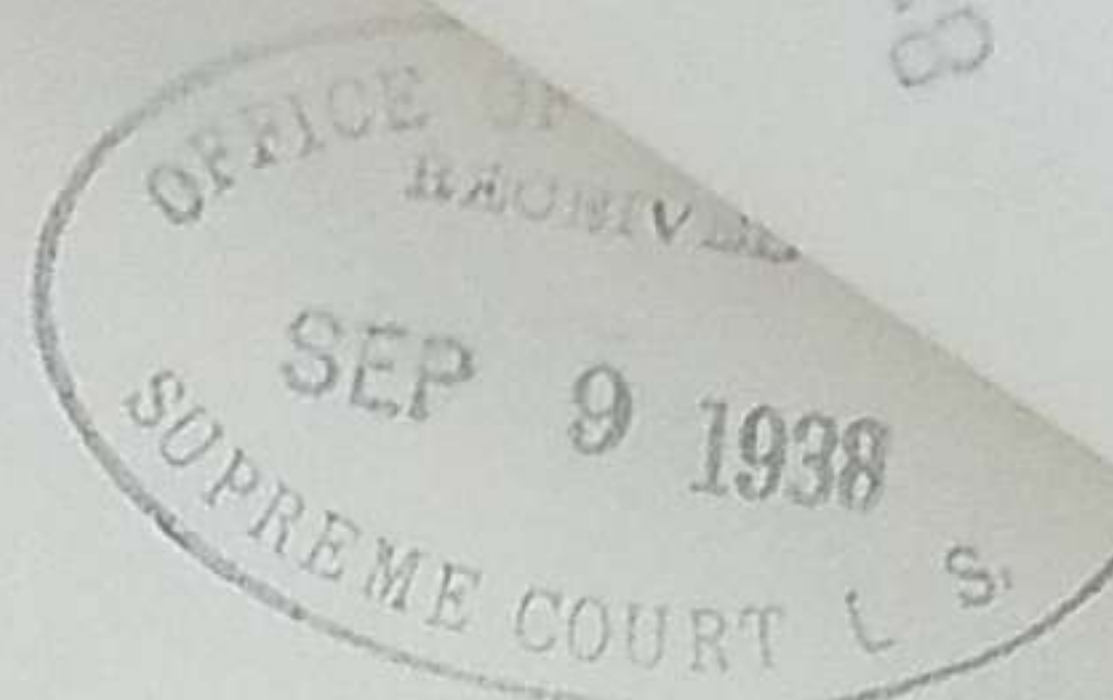
Very truly yours, Assistant

EPC:DR

Bernard G. Nemeroff
BERNARD G. NEMEROFF

ALD:MB

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
—
WHITEHALL 4-5077



367/5

September 8th, 1938

Clerk of the United States Supreme Court
Washington, D.C.

Re: Erie Railroad Company
Vs: Harry J. Tompkins
Calendar No. 367,
October Term, 1937

Dear Sir:

The above entitled matter was argued before the Supreme Court in the October Term of 1937 and was remanded to the Circuit Court of Appeals for the Second Circuit for further proceedings in conformity with the opinion of the United States Supreme Court. The Circuit Court of Appeals has recently rendered a decision in the above matter adverse to the above named Harry J. Tompkins, who is my client.

I am now in the course of preparing a motion to proceed with a petition for a writ of certiorari in forma pauperis in the United States Supreme Court. I am informed that in preparing such a motion there must be submitted with the petition for certiorari a copy of the record in the case. Since, however, in the above matter numerous copies of the record were filed in connection with the previous appeal, I should like to know whether it would be necessary for me to file any further record or records in connection with my new motion.

In the event that any further records are required to be filed, I would appreciate your informing me whether the Circuit Court of Appeals' record is required or whether it would be preferable to file copies of the record previously submitted in the United States Supreme Court.

Very truly yours,

Bernard G. Nemeroff
BERNARD G. NEMEROFF

ALD:MB

Supreme Court of the United States

No. 367 — , October Term, 1937

Erie Railroad Company,

Petitioner,

vs.

Harry J. Tompkins.

**On writ of Certiorari to the United States Circuit Court of Appeals
for the Second ——— Circuit.**

This cause came on to be heard on the transcript of the record from
the United States Circuit Court of Appeals for the Second ———
Circuit, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged
————— by this Court that the
judgment ——— of the said United States Circuit Court of
Appeals, in this cause, be, and the same is hereby, reversed with costs;
—————; and that this cause be, and the same
is hereby, remanded to the said Circuit ——— ~~Court of the United States~~
~~for the~~ ——— ~~District of~~ Court of Appeals for further
proceedings in conformity with the opinion of this Court.

Per Mr. Justice Brandeis,

April 25, 1938.

Louis Brandeis

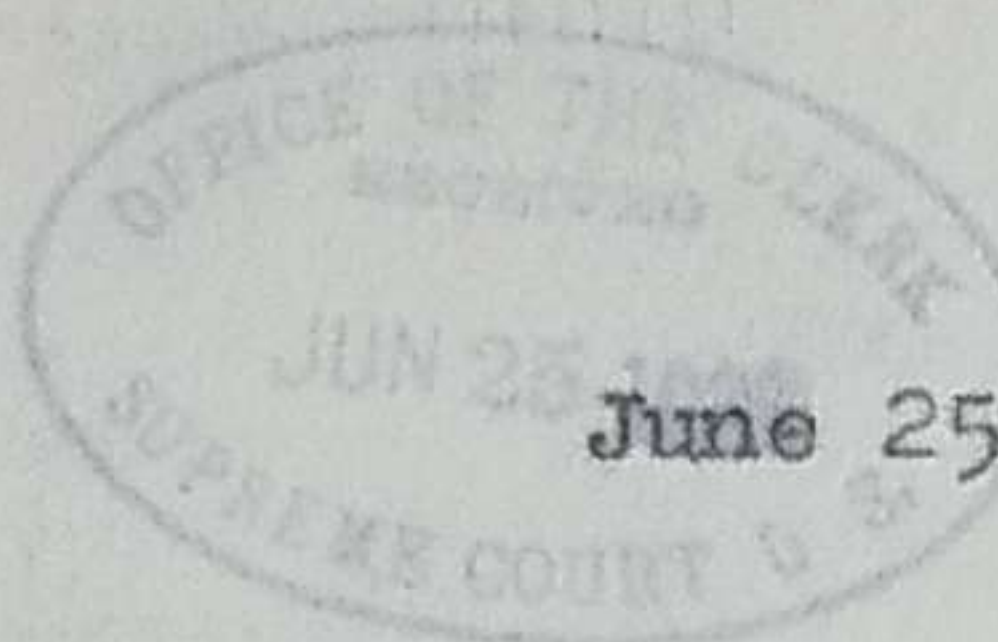
Mr. Justice Cardozo took no part in the consideration or
decision of this case.

Concurring opinion by Mr. Justice Reed.

Separate opinion by Mr. Justice Butler in which Mr. Justice
McReynolds concurs.

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

CHICAGO, ILLINOIS



June 25, 1938 June 22, 1938

Charles T. McCormick, Esq.

Clerk, Supreme Court of the United States
Chicago, Illinois

Dear Sir:

Pursuant to your request of the 22nd instant I am sending you under separate cover copies of some of the briefs filed in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937. If you would like copies of the other briefs filed are not available.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By

Charles T. McCormick

Professor of Law

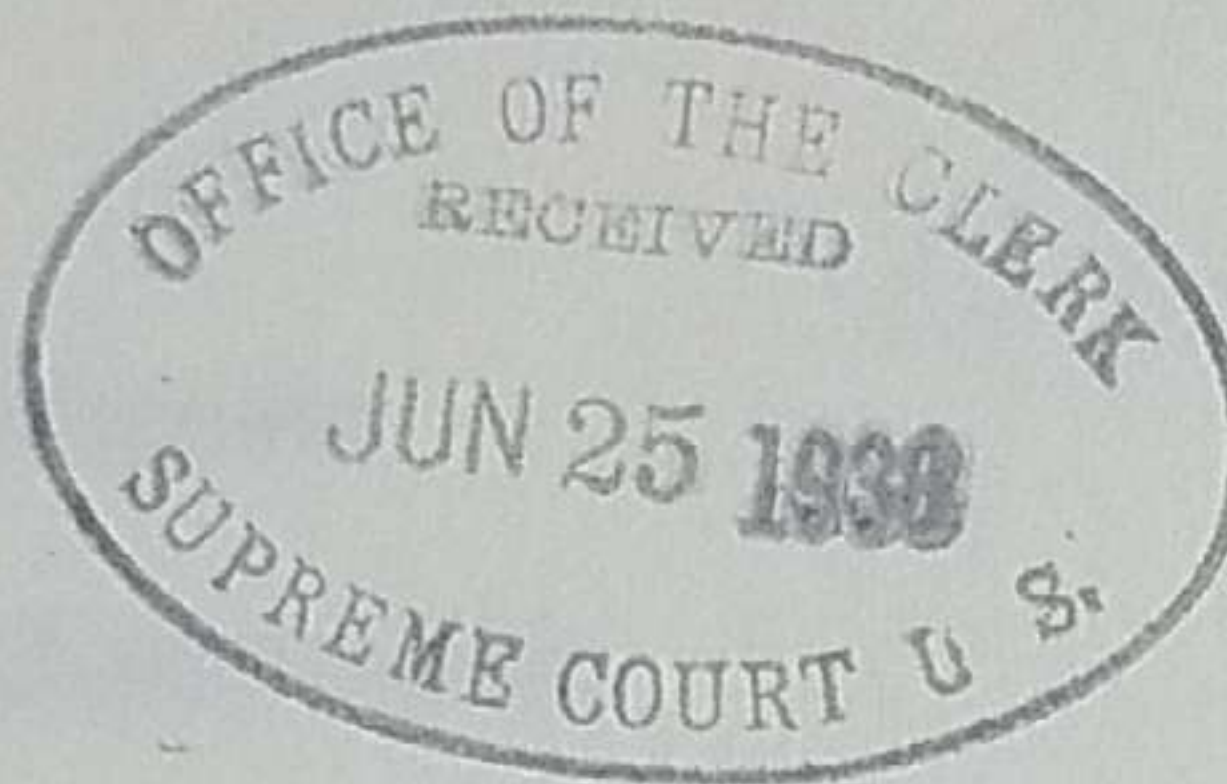
Assistant

CTM/MP
HBW:DK

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

CHICAGO, ILLINOIS

367
37



June 22, 1938

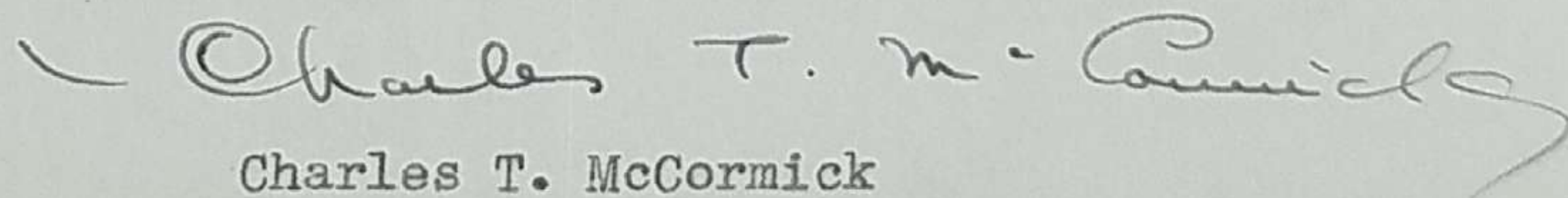
Charles Elmore Cropley, Esq.
Clerk, Supreme Court of the United States
Washington, D. C.

Dear Sir:

I am preparing a short article for the Illinois Law Review upon the case of Erie Railway Company v. Tompkins. If you have available extra copies of the petition for certiorari, briefs and printed record, or any of these, it would be helpful if you could let me have them.

With thanks for the requested favor, I am

Yours very truly,



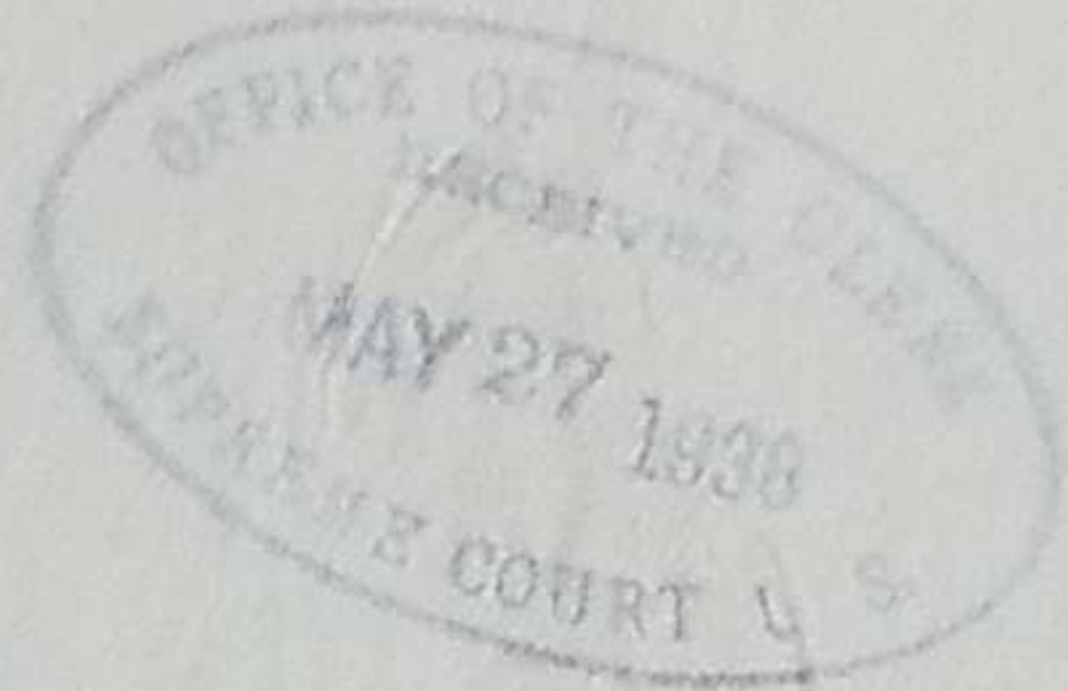
Charles T. McCormick
Professor of Law

CTM/MP

Dear Mr. Cropley:

We will appreciate your advice.

[Signature]



May 27, 1938

May 24, 1938

Mr. L. S. Mercer

St. Paul, Minnesota

Dear Sir:

Mr. Bernard G. Wexleroff

32 Bro New York, New York

In reply to your letter of May 24th concerning the appearance of counsel in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937, you are ad-

vised that Mr. Rees argued the case but that the appearances of the other gentlemen mentioned have not been entered in this Court.

You will appreciate that we necessarily must be governed by copy received from Yours truly, find upon re-examination that we did so in this instance.

CHARLES ELMORE CROPLEY, Clerk

We are, however, calling the matter to the attention of the court and will be pleased to incorporate in the permanent bound volume By authorized corrections.

Thanking you for your trouble Assistant

EPC:DK

Yours very truly
WEST PUBLISHING CO.

By

[Signature]
Editorial Council

LEW:HE

Dear Mr. Copley:

We will appreciate your advice.

Amman

May 24, 1938

Mr. Bernard G. Nemeroff
32 Broadway
New York, New York

Re: Erie R. Co. v. Tompkins,
58 Supreme Court 817

Dear Mr. Nemeroff:

We have your letter of May 21 stating that you and Bernard Kaufman are attorneys for the respondent and plaintiff in the above case and that Aaron L. Danzig, William Walsh and Fred H. Rees were counsel on the brief.

Copy
You will appreciate that we necessarily must be governed by copy received from the court. We find upon re-examination that we did so in this instance.

We are, however, calling the matter to the attention of the court and will be pleased to incorporate in the permanent bound volume the authorized corrections.

Thanking you for your trouble in the matter,
we are

Yours very truly
WEST PUBLISHING CO.

By

Amman
Editorial Counsel

LSM:HM

LAW OFFICES

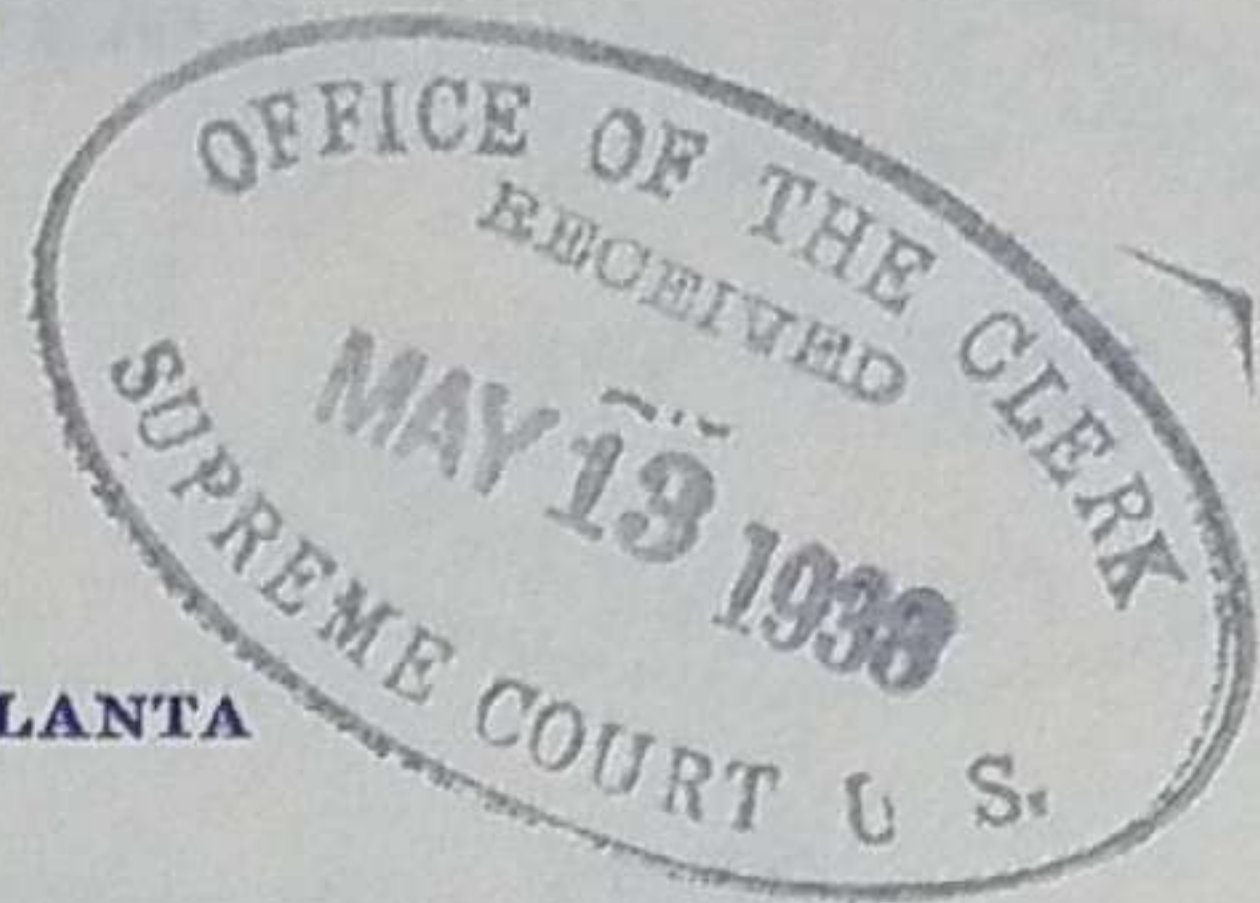
BURRESS & DILLARD

SUITE 1115 HURT BUILDING

PHONE WALNUT 5473-5474

JOHN R. BURRESS

ROBT. M. DILLARD



ATLANTA

May 12, 1938.

36
Clerk of the Supreme Court
Washington, D.C.

Dear Sir:

There was a decision by Justice Brandies in the case of Erie Railroad vs. Tompkins, rendered by the Supreme Court three or four weeks ago.

We understand that printed copies are sent out upon request, and we would thank you very much to let us have a copy of this decision.

Yours truly,

BURRESS & DILLARD

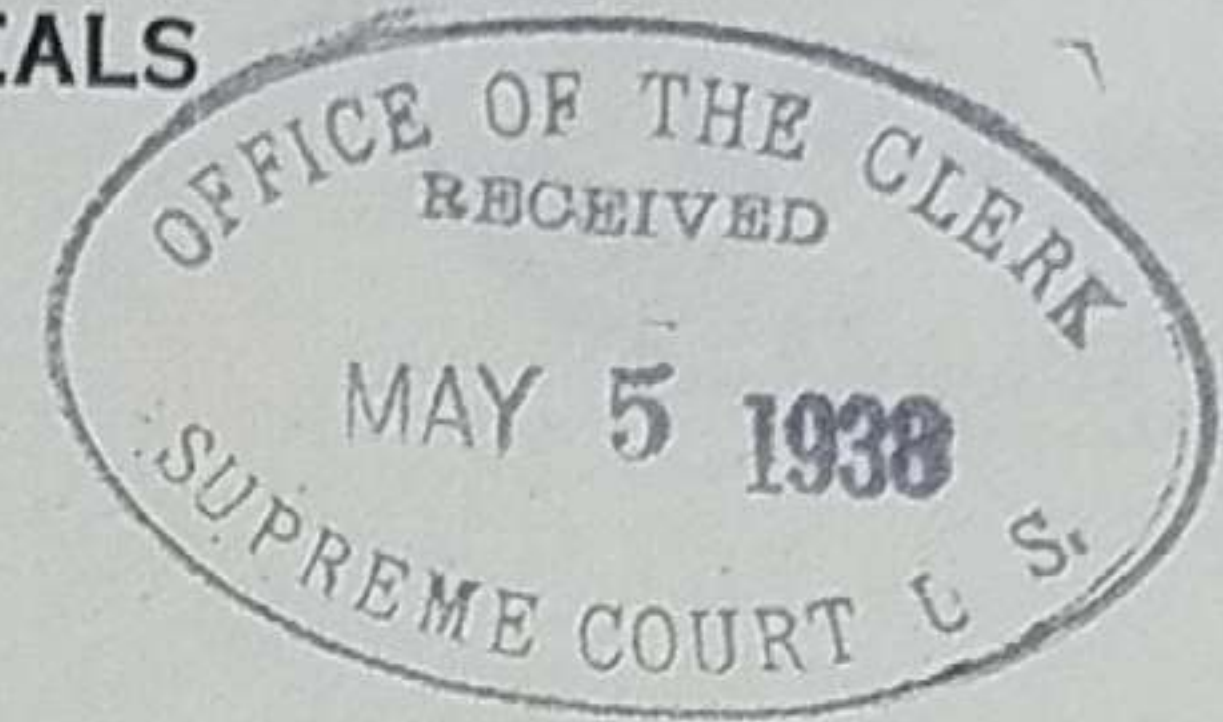
BY

John R. Burress

JRB:S

*Sent
5/13/38*

UNITED STATES CIRCUIT COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK



May 4, 1938

367
Charles Elmore Cropley, Esq.,
Clerk US Supreme Court,
Washington, DC.

Dear Sir;-

Erie RR Co. v Tompkins.

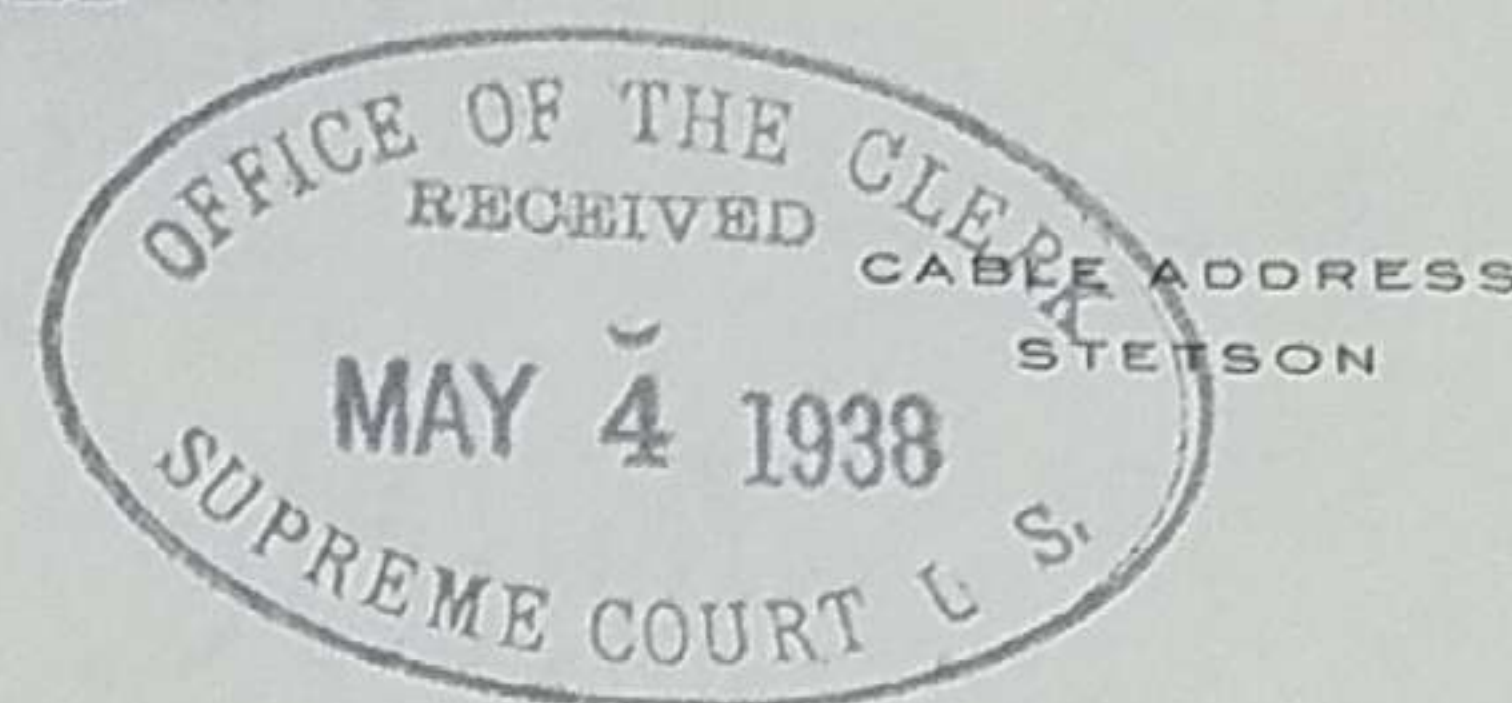
I beg to acknowledge receipt of the mandate of your
court in the above entitled case.

Very truly yours,

[Handwritten signature]
Clerk

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER
PORTER R. CHANDLER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)
15 BROAD STREET
NEW YORK



May 3, 1938.

Dear Sir:

I beg to acknowledge receipt of your letter of May 2, 1938, advising me that the mandate of the Supreme Court in the case of Erie v. Tompkins, No. 367, October Term, 1937, issues on said May 2nd to the Clerk of the United States Circuit Court of Appeals for the Second Court, and directs that court to issue execution in favor of our client for its taxed costs and the attorney's docket fee of \$20, or a total of \$871.60.

I also acknowledge receipt of receipted bill and refund check to cover the deposit of \$920. made in this case.

Very truly yours,

Theodore Kiendl

Charles Elmore Cropley, Esq.,
Clerk, Supreme Court of the
United States,
Washington, D. C.

United States of America, ss:

The President of the United States of America,

(SEAL)

To the Honorable the Judges of the United States Circuit
Court of the United States for the Court of Appeals
District of for the Second Circuit,

GREETING:

Whereas, lately in the United States Circuit Court of Appeals for the
Second Circuit, in a cause between Erie Railroad Company,
Appellant, and Harry J. Tompkins, Appellee, No. 307, October Term,
1936, wherein the judgment of the said Circuit Court of Appeals,
entered in said cause on the 14th day of June, A. D. 1937, is in
the following words, viz:

"This cause came on to be heard on the transcript of record
from the District Court of the United States for the Southern
District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged,
and decreed that the judgment of said District Court be and it
hereby is affirmed with interest and costs.

It is further ordered that a mandate issue to the said District
Court in accordance with this decree."

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and **thirty-seven** — , the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered and ——— adjudged ——— by this Court that the **judgment** — of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, **reversed with costs**; and that the said appellant, **Erie Railroad Company**, recover against the said appellee **Eight Hundred and Seventy-one Dollars and Sixty Cents** for its costs herein expended and have execution therefor.

And it is further ordered, That this cause be, and the same is hereby, remanded to the **said Circuit Court of the United States for the District of** Appeals for further proceedings in conformity with the opinion of this Court.

April 25, 1938.

May 2, 1938.

William Parkin, Esq.,
New York, N.Y.

Dear Sir:

I hand you herewith the mandate of this Court
in the case of Erie Railroad Company v. Harry J.
Tompkins, No. 367, October Term, 1937.

Kindly acknowledge receipt.

Yours truly,

CHARLES EDMORE CROPLEY, Clerk.

By

Deputy.

HWB-W

Encl.

refund check to cover the deposit of \$100, therein-
fore made in this case. Kindly acknowledge receipt.

Yours truly,

CHARLES EDMORE CROPLEY, Clerk.

By

Deputy.

HWB-W

Encl.

May 2, 1938.

Theodore Kiendl, Esq.,
New York, N.Y.

Dear Sir:

The mandate of this Court in the case of
Erie Railroad Company v. Harry J. Tompkins, No. 367,
October Term, 1937, issues today to the Clerk of
the U. S. Circuit Court of Appeals for the Second
Circuit. It directs that court to issue execution
in favor of your client for its taxed costs in this
Court and the attorney's docket fee of \$20, or a
total of \$871.60. This amount must be collected in
that court.

There is herewith enclosed receipted bill and
refund check to cover the deposit of \$920, hereto-
fore made in this case. Kindly acknowledge receipt.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Deputy.

HWB-W

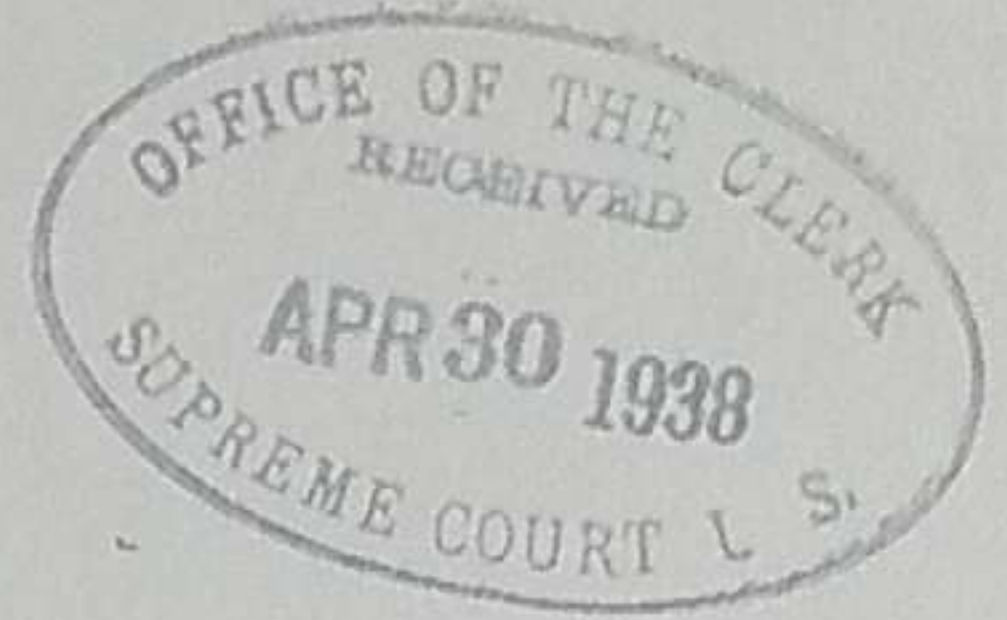
Encl.

DAVIS, POLK, WARDWELL, GARDINER & REED
BY: William C. Cannon
William C. Cannon

Theodore Kiendl
Theodore Kiendl

Harold W. Bissell
Harold W. Bissell

Counsel for Petitioner



In The
SUPREME COURT OF THE UNITED STATES
October Term--1937

----- X
ERIE RAILROAD COMPANY (a New York :
corporation), :
 :
Petitioner, :
 :
-against- : No. 367
 :
HARRY J. TOMPKINS, :
 :
Respondent. :
----- X

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Second Circuit.

IT IS HEREBY STIPULATED AND AGREED by and be-
tween the attorneys for the respective parties hereto that the
mandate of the Supreme Court of the United States in the above
entitled cause shall issue forthwith and that an order to that
effect may be entered, if necessary, without further notice to
either of the parties.

DATED, N.Y. APRIL 29, 1938.

Alexander L. Strouse
Alexander L. Strouse

Fred H. Rees
Fred H. Rees

Bernard G. Nemeroff
Bernard G. Nemeroff

Counsel for Respondent.

DAVIS, POLK, WARDWELL, GARDINER & REED

BY: William C. Cannon
William C. Cannon

Theodore Kiendl
Theodore Kiendl

Harold W. Bissell
Harold W. Bissell

Counsel for Petitioner

January 19, 1938.

Bernard G. Nemeroff, Esquire,

New York, N. Y.

Dear Sir:

The case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937, will be reached for argument the end of the week of January 31st.

I suggest that you inquire on February 2nd for definite information as to the day counsel should be present.

Yours truly,

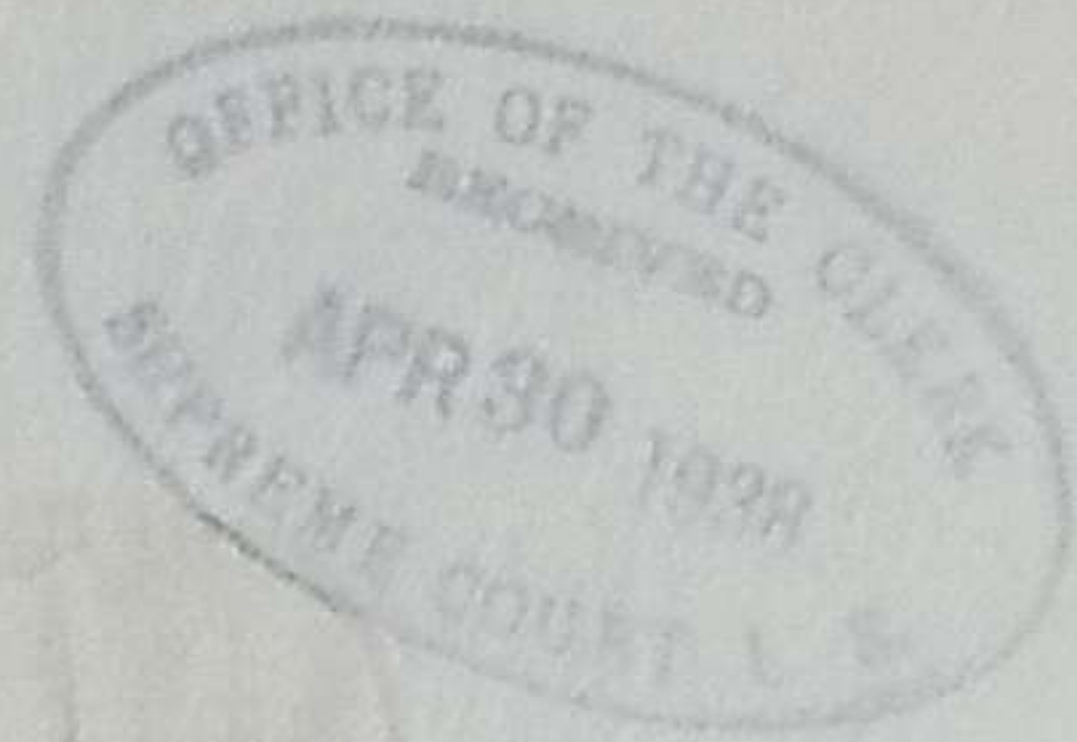
CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-1890



April 30, 1938

Bernard G. Nemeroff, Esq.
New York City

April 29, 1938

Dear Sir:

I have your letter of April 29th enclosing
a stipulation for the immediate issuance of the mandate
in the case of Erie Railroad Co. v. Tompkins, No. 367,
October Term, 1937.

Dear Sir:

Accordingly the mandate will issue on Monday,
In conformance with your letter of April 28, 1938, con-
cerning the above matter, enclosed please find stipulation
May 2nd.
as you have suggested. I would appreciate your advising me
when you have forwarded the mandate to New York.

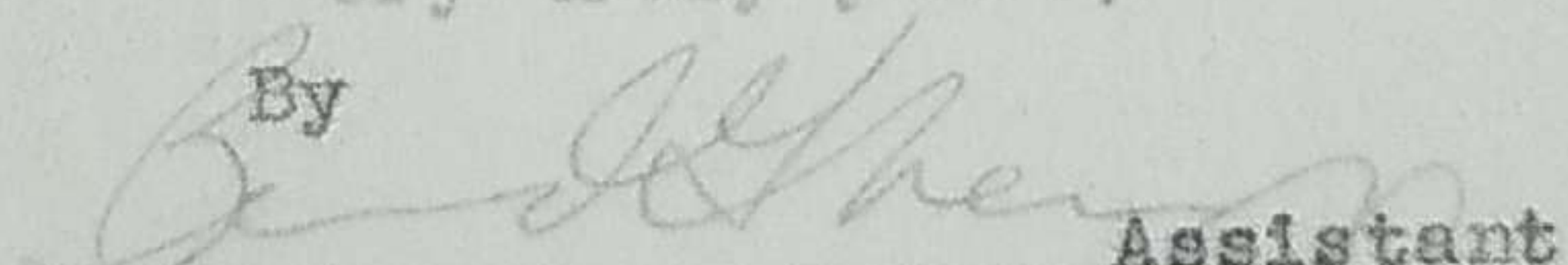
Yours truly,

Please accept my thanks for your kind cooperation.

CHARLES ELMORE CROPLEY, Clerk

Very truly yours,

By


Assistant
BERNARD G. NEMEROFF

EPC:DK

MARVIN A. LARONGE
IRVING KANE
ROBERT GLENN

LARONGE AND KANE
ATTORNEYS AT LAW
227 UNION TRUST BLDG.
CLEVELAND, OHIO

TELEPHONE
MA 1-8338

March 31, 1938

Laronge & Kane, Esqs.

Cleveland, Ohio

Gentlemen: of the United States Supreme Court
Washington, D. C.

In reply to your inquiry of March 30th you
are advised that the case of Erie Railroad Co. v. Tompkins - No. 367

Tompkins, No. 367, October Term, 1937, was orally argued

Dear Sir:
before this Court on January 31st and is at present under

We note in 58 Supreme Court Reporter 50
advisement, certiorari was granted on October 11, 1937.

Please advise whether this case has been heard on
its merits and where the opinion is reported. If
the case has not yet been heard, we shall appreciate
your advice as to when it is expected.
Yours truly,
CHARLES ELMORE CROPLEY, Clerk

Thanking you for your kind attention to
this matter, we are

Assistant

EPC:DK

IK:FB

367
April 29, 1938

Clerk of Supreme Court of the
United States
Washington, D.C.

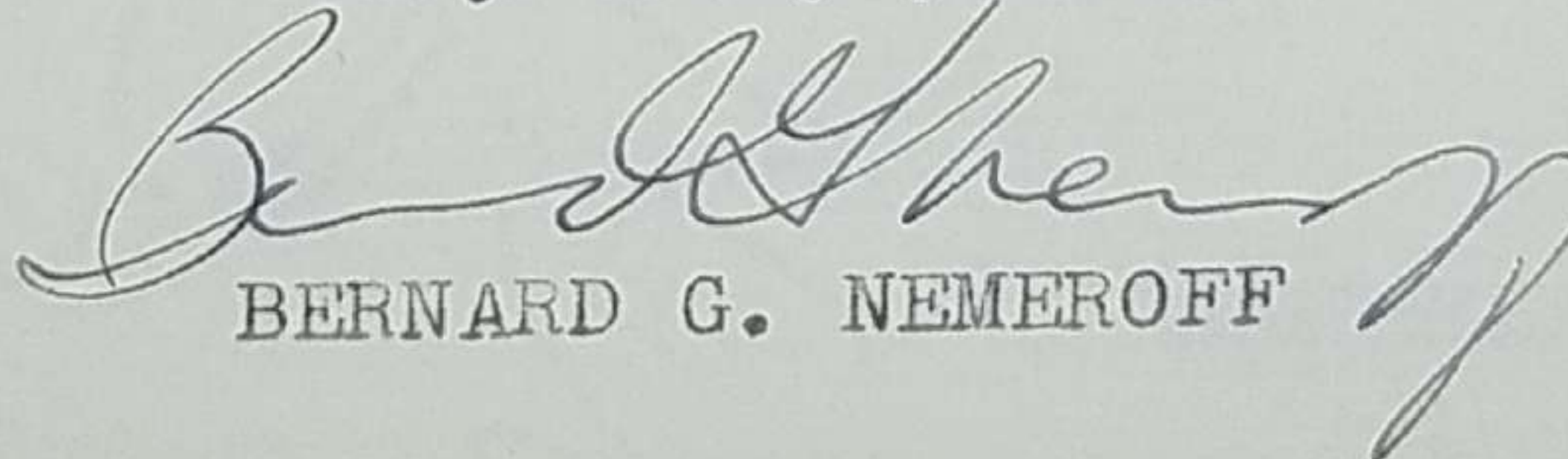
Attention: Mr. H.B. Willey
Re: Erie v Tompkins, No.367
October Term 1937

Dear Sir:

In conformance with your letter of April 28, 1938, concerning the above matter, enclosed please find stipulation as you have suggested. I would appreciate your advising me when you have forwarded the mandate to New York.

Please accept my thanks for your kind cooperation.

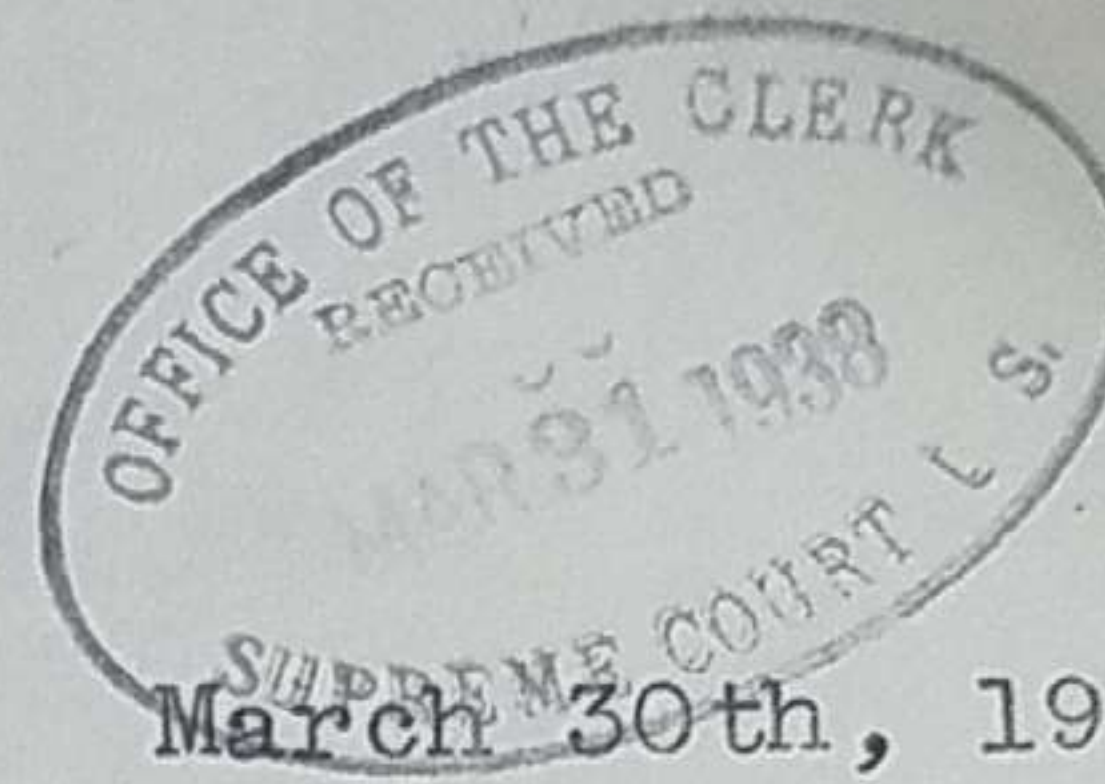
Very truly yours,


BERNARD G. NEMEROFF

BGN:BM
ENC:

LARONGE AND KANE
ATTORNEYS AT LAW
837 UNION TRUST BLDG.
CLEVELAND, OHIO

MARVIN J. LARONGE
IRVING KANE
ROBERT DESBERG



Clerk of the United States Supreme Court
Washington, D. C.

In Re: Erie Railroad Co. vs. Harry J. Tompkins - No. 367

Dear Sir:

We note in 58 Supreme Court Reporter 50 that certiorari was granted on October 11, 1937. Please advise whether this case has been heard on its merits and where the opinion is reported. If the case has not yet been heard, we shall appreciate your advice as to about when a decision may be expected.

Thanking you for your kind attention to this matter, we are

Very truly yours,

IK:FS

Apartment 3,
4820 New Hampshire Ave., N.W.,
Washington April 28, 1938.
April 27, 1938.

367
Paul D. Miller, Esq.,
New York, N.Y.

N. Y. Rapid Transit Corporation
v. City of N.Y., and Brooklyn and
Queens Transit Corporation v. City
of New York, Nos. 235 & 236, Oct. Term, 37.

Dear Sir: Supreme Court,

In compliance with your request of the 21st
instant, I am sending you under separate cover four
copies of Contract No. 4. The remaining copies of
this contract have not been returned from the
Justices.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

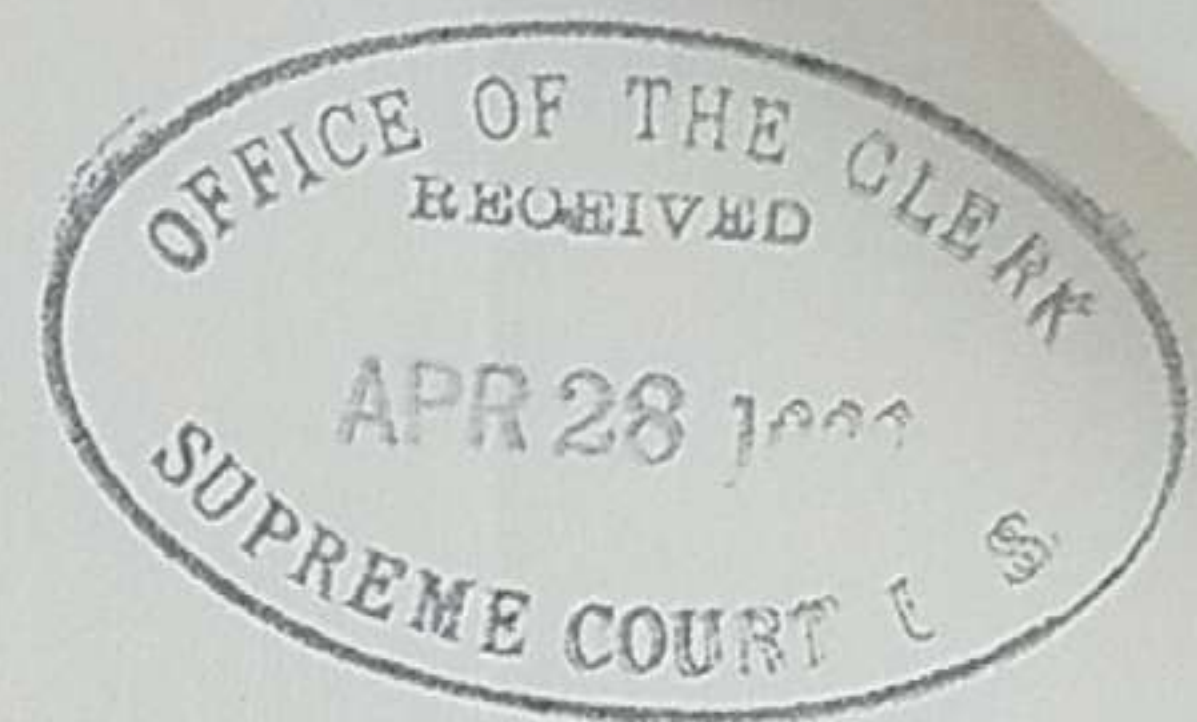
By

Mrs. J. L. Murphy
Assistant.

EPC-W

367

Apartment 3,
4820 New Hampshire Ave., N.W.,
Washington, D. C.
April 27, 1938.



Mr. Clerk,
U. S. Supreme Court,
Washington, D. C.

Dear Mr. Clerk:

Will you kindly at your early convenience
mail me opinion of the Court in Tompkins case,
as I remember - opinion last Monday by Mr.
Justice Brandies about Common Law in Penn.

I thank you in advance for this opinion.

Yours truly,

Mrs. F. L. Murphy
(Mrs) F. L. Murphy.

send 4/28/38

CONLEY, THOMPSON & NEFF
ATTORNEYS AND COUNSELLORS AT LAW
SUITE 2-4 3 UNION BUILDING
CHARLESTON, WEST VIRGINIA

WILLIAM S. CONLEY
A. GARNETT THOMPSON
JAMES S. CONLEY
HAROLD H. NEFF



April 27, 1938

April 28, 1938

Wm. G. Conley, Esq.

Charleston, W. Va.
Clerk of the Supreme Court of the United States
Washington, D. C.

Dear Sir:

Dear Mr. Cropley:

In compliance with your request of April 27th I am sending you under separate cover a copy of the opinion in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937. My attention has been called to an opinion handed down by the Court over ninety-four years as to its jurisdiction over the matters involved in Tompkins, No. 367, October Term, 1937. Copies of the records and briefs are not available for distribution.

If you have a printed copy of the opinion available I will appreciate it very much indeed if you will send a copy of the record and the briefs filed on both sides with it. Yours truly,
CHARLES ELMORE CROPLEY, Clerk

Sincerely yours,

Assistant

EPC:DK

c-1

Wm. G. CONLEY

CONLEY, THOMPSON & NEFF
ATTORNEYS AND COUNSELLORS AT LAW
1101-2-3-4-5 UNION BUILDING
CHARLESTON, WEST VIRGINIA

WILLIAM G. CONLEY
A. GARNETT THOMPSON
JAMES S. CONLEY
HAROLD H. NEFF

April 27, 1938

367
Hon. Charles E. Cropley
Clerk of the Supreme Court of the United States
Washington, D. C.

Dear Mr. Cropley:

My attention has been called to an opinion handed down by the Supreme Court last Monday in the case of Thompkins v. Erie Railroad Company, wherein the press states the Court had overruled numerous opinions of the Court covering a period of ninety-four years as to its jurisdiction over the matters involved in that case. I am sorry I cannot give you the number of the case and more information in order that you could more readily locate it.

If you have a printed copy of the opinion available I will appreciate it very much indeed if you will send me a copy, and if the record is not too voluminous a copy of the record and the briefs filed on both sides would be greatly appreciated.

Sincerely yours,

Wm. G. Conley

W. M. G. CONLEY

c-1

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1937

ERIE RAILROAD COMPANY (a New York
corporation),

Petitioner,

vs.

HARRY J. TOMPKINS,

Respondent.

No. 367

Service of a copy of Respondent's brief in
opposition to above-named petitioner's petition for a writ of
certiorari, is hereby admitted.

Dated, N.Y. September 17, 1937.

Davis Pack Wardwell Gardiner & Reed
Attorneys for Petitioner
Harold W. Bisbee

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-8077

April 28, 1938.

367
Bernard G. Nemeroff, Esquire, April 27, 1938
New York, N. Y.

Clerk Dear Sir: Supreme Court of the
United States

Washington, D.C. I have your letter of April 27th in refer-
ence to the immediate issuance of the mandate in the
VS. HARRY J. TOMPKINS, RESPONDENT
case of Erie R. R. Co. v. Harry J. Tompkins, No. 367,

Dear October Term, 1937.

On April 25, 1938 Since the Court will not be in session from the
above captioned matter remanding the case to the Circuit Court of
Appeals May 2nd until May 16th for the purpose of hearing such
an application I suggest that counsel sign a stipula-
tion to that effect. Because of the fact that the respond-
ent's application has been in the Courts for nearly three years, we are desirous of having
this matter heard by the Circuit Court of Appeals before the summer
adjournment.

Upon receipt of the stipulation the mandate
will be issued by this office without the necessity of
a Court order. We are desirous of obtaining an order for the immediate issuance of
the mandate of the Supreme Court. We have communicated with the
attorneys for the petitioner and they have consented to sign a stip-
ulation or any other document which will help to obtain an order for
the immediate issuance of the mandate as permitted by Rule 34 of the
Rules of the Supreme Court. I should therefore appreciate your ad-
vising us immediately by return mail. Yours truly,

1. Whether or not an application for an order for the immediate
issuance of the mandate to the Circuit Court of Appeals and an
affidavit setting forth the above facts if necessary; and

2. whether such papers, if sent by mail to your office, will be
satisfactory or whether it is necessary to make such applica-
tion in open court if such application be made while the
court is in session. By Assistant.

HBW:c I should also appreciate your advising whether the above stated reason
is generally considered an appropriate one for the granting of an
order directing the immediate issuance of a mandate.

Very truly yours,

B. Nemeroff
BERNARD G. NEMEROFF

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-5077

367

OFFICE
APR 27
SUPREME COURT

April 27, 1938

Clerk of the Supreme Court of the
United States
Washington, D.C.

RE: ERIE R.R., PETITIONER
VS. HARRY J. TOMPKINS, RESPONDENT
October Term 1937, No. 367

Dear Sir:

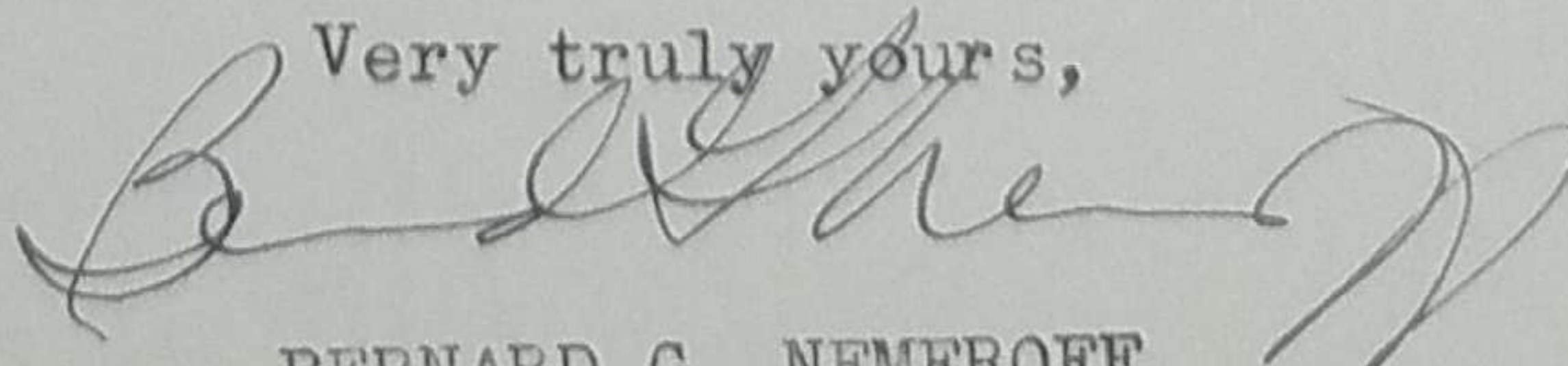
On April 25, 1938, the Supreme Court delivered an opinion in the above captioned matter remanding the case to the Circuit Court of Appeals for the Second Circuit for certain proceedings in accordance with the said opinion. Because of the fact that the respondent's financial circumstances are desperate and the matter has been in the Courts for nearly three years, we are desirous of having this matter heard by the Circuit Court of Appeals before the summer adjournment.

We are desirous of obtaining an order for the immediate issuance of the mandate of the Supreme Court. We have communicated with the attorneys for the petitioner and they have consented to sign a stipulation or any other document which will help to obtain an order for the immediate issuance of the mandate as permitted by Rule 34 of the Rules of the Supreme Court. I should therefore appreciate your advising me immediately by return mail,

1. Whether or not an application for an order for the immediate issuance of the mandate can be made on stipulation and an affidavit setting forth the above facts if necessary; and
2. whether such papers, if sent by mail to your office, will be satisfactory or whether it is necessary to make such application in open court if such application be made while the court is in session.

I should also appreciate your advising whether the above stated reason is generally considered an appropriate one for the granting of an order directing the immediate issuance of a mandate.

Very truly yours,



BERNARD G. NEMEROFF

BK:BM
(Spec. Del.)

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-5077

January 26, 1938

January 25, 1938

Bernard G. Nemeroff, Esq.

New York City

Dear Sir:

The case of Erie Railroad Co. v. Tompkins,
No. 367, October Term, 1937, of which you inquire in
your letter of January 25th is first on the call for
January 31st and counsel should be present on that day.

Dear Sir:

Yours truly,

It is clear from your letter of January 22nd that the above
captioned case will be the first case argued on
January 31, 1938. However, this case does not appear on the
list published in the New York Law Journal of cases to be
called before the Supreme Court on January 31st.

CHARLES ELMORE CROPLEY, Clerk

By

I am, therefore, writing at this time to clear up any possible
misapprehension and would appreciate your confirming the fact that the
above case will be the first case argued on January 31st, in
spite of its omission from the list in the New York Law
Journal.

EPC:DK

Assistant

BERNARD G. NEMEROFF

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-5077

367

January 25, 1938

OFFICE
JAN
SUPREME COURT

Hon. Charles Elmore Cropley, Clerk
United States Supreme Court
Washington, D.C.

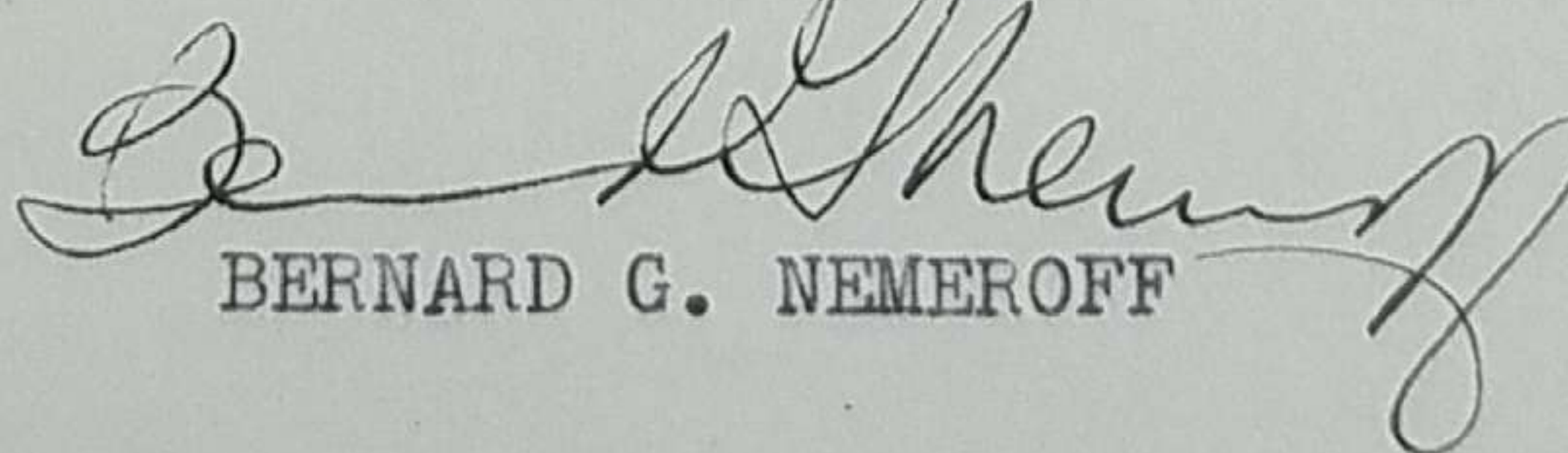
RE: ERIE RAILROAD V TOMPKINS
No.367, October Term 1937

Dear Sir:

It is clear from your letter of January 22nd that the above captioned case will be the first case called for argument on January 31, 1938. However, this case does not appear on the list published in the New York Law Journal of cases to be called before the Supreme Court on January 31st.

I am, therefore, writing at this time to clear up any possible mistake and would appreciate your confirming the fact that the above case will be the first case argued on January 31st, in spite of its omission from the list in the New York Law Journal.

Very truly yours,


BERNARD G. NEMEROFF

BGN:BM

January 22, 1938.

Bernard G. Nemeroff, Esquire,

New York, N. Y.

Dear Sir:

The continuance of several cases by order of the Court has made it necessary to revise the calendar for the week of January 31st. You were heretofore advised that the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937, would be reached for argument the end of that week. You are now definitely advised that this case will be the first on call for Monday, January 31st.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c

December 21, 1937.

Bernard G. Nemeroff, Esquire,

New York, N. Y.

Dear Sir:

The case of Erie Railroad Company v. Harry J. Tompkins, No. 367, October Term, 1937, may be called for argument the end of the week of January 10th.

If not reached at that time the case will not come on for argument until the session of the Court beginning January 31st.

I suggest that you inquire early in the first-mentioned week for definite information as to the day counsel should be present.

Please so advise Mr. Strouse.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c

December 21, 1937.

Chadbourne, Wallace, Parke & Whiteside, Esquires,
New York, N. Y.

Gentlemen:

It now appears that the case of Guy T. Helvering, Commissioner, v. Charles E. Mitchell, No. 324, October Term, 1937, will be called for argument the end of the week of January 10th.

I suggest that you inquire early that week for definite information as to the day counsel should be present.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c

XU
*The sender of this
Message*

authorizes us to say that a
TELEGRAPHIC reply is desired

Via WESTERN UNION

3938 B. WHITE
PRESIDENT

NEWCOMB CARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE-PRESIDENT

PANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

1201-S

WESTERN UNION (23)

SYMBOLS

DL = Day Letter

NM = Night Message

NL = Night Letter

LC = Deferred Cable

NLT = Cable Night Letter

Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.

Received at 708 14th St.. N. W. Washington. D. C.

WD29 11 XU=CD NEWYORK NY 13 1008A

CLERK UNITED STATES SUPREME COURT=

PLEASE ADVISE COLLECT WHETHER NUMBER 367 TOMPKINS V ERIE
TRIAL TOMORROW=

BERNARD G NEMEROFF.

367

367.

FASTEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

| | | |
|---------------|--|----------------|
| DAY LETTER | | |
| NIGHT MESSAGE | | NIGHT LETTER |
| NIGHT LETTER | | SHIP RADIOGRAM |

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

Bernard G. Nemeroff

32 Broadway

New York, N. Y.

Still possibility Erie Railroad against Tompkins reached for argument tomorrow. Phone me four thirty today

CHARLES ELMORE CROPLEY, CLERK.

COLLECT
#367

HBW:c

BERNARD G. NEMEROFF
COUNSELLOR AT LAW
32 BROADWAY
NEW YORK
WHITENALL 4-5077

December 28, 1937

Bernard G. Nemeroff, Esq.
New York City

Dear Sir:

I have your letter of the 27th instant with reference to the date of argument of the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937.

As stated in my recent letter, there is a possibility that this case will be called for argument the end of the week of January 10th. It will not be called prior to the 13th. Due to the state of the docket I cannot give you a definite release to the session beginning January 31st.

In your recent letter to me concerning the above captioned case, you stated this: "In view of the fact that opposing counsel has not served his brief within the time provided by the rule it is not essential that you comply with the rule requiring that your brief be on file one week prior to the date of argument, and your brief will be received and filed up expect to the date of argument." If the case were reached the week of January 10th, the opposing counsel's brief in your office.

I note that Frederick H. Rees will appear in oral argument. I am enclosing a form for the personal statement required of applicants for admission, printed on the reverse side of which you will find the rule governing admissions. Mr. Rees' admission may be moved on the day the case is called or on any day prior thereto on which the Court is in session, provided his papers are on file and are in proper form. He should present himself with his sponsor in this office not later than 11:30 on the morning of the day he desires to be admitted.

Yours truly,

I should very much appreciate your CHARLES ELMORE CROPLEY, Clerk
can do to have the argument passed to the week of January 31st, in the event it is reached sooner. By

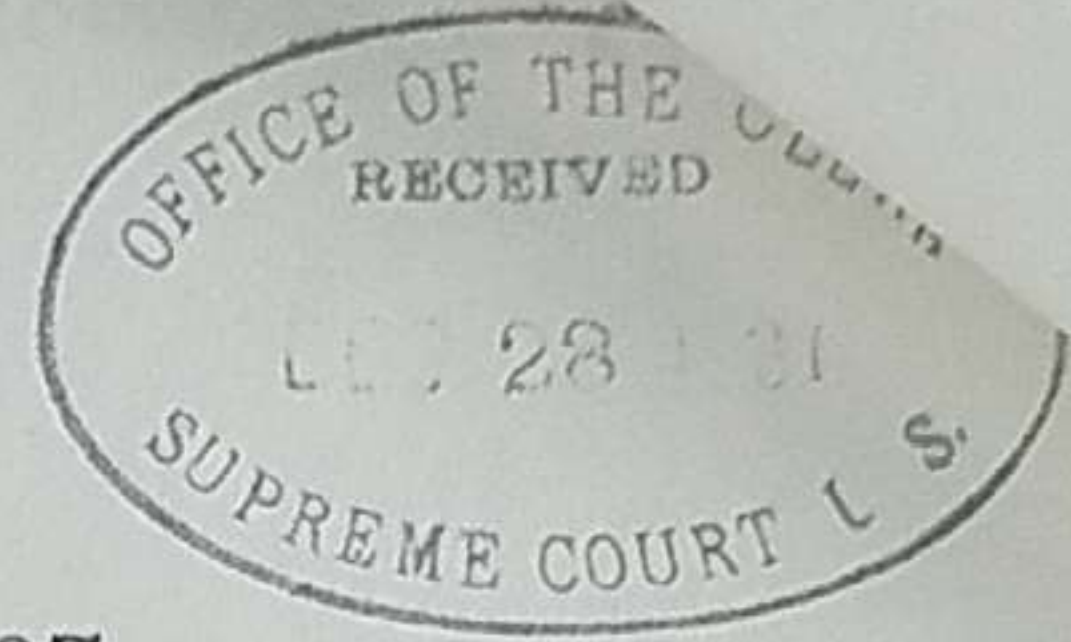
HBW:DK

Very truly yours, Assistant

BERNARD G. NEMEROFF

BK:BM

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
—
WHITEHALL 4-5077



Hon. Charles Elmore Cropley
Clerk United States Supreme Court
Washington, D.C.

RE: ERIE V TOMPKINS, NO.367 OCTOBER TERM 1937

Dear Sir:

In your recent letter to me concerning the above captioned case, you stated this case might be reached the end of the week of January 10th, 1937, and if not then reached would most likely be reached the week of January 31st.

We have not as yet received the appellant's brief, although we expect it today. Under those circumstances, if the case were reached the week of January 10th the appellant's filing of its brief in your office would not be timely.

On behalf of the respondent, I would like to arrange to have the cause passed to the week of January 31st in the event it is reached for argument before that week. I am advised that it is necessary in order to have a cause passed, to appear in open court to make application and that such applications are rarely granted except in the case of illness of counsel. Because we are not receiving appellant's briefs until at least today, we do not feel we would have sufficient time to properly prepare our brief and to prepare our oral argument if the matter were reached during the week of January 10th.

I should very much appreciate your advising me what, if anything, I can do to have the argument passed to the week of January 31st, in the event it is reached sooner.

Very truly yours,

Bernard G. Nemeroff
BERNARD G. NEMEROFF

BK:BM

Hon. Charles Elmore Cropley,

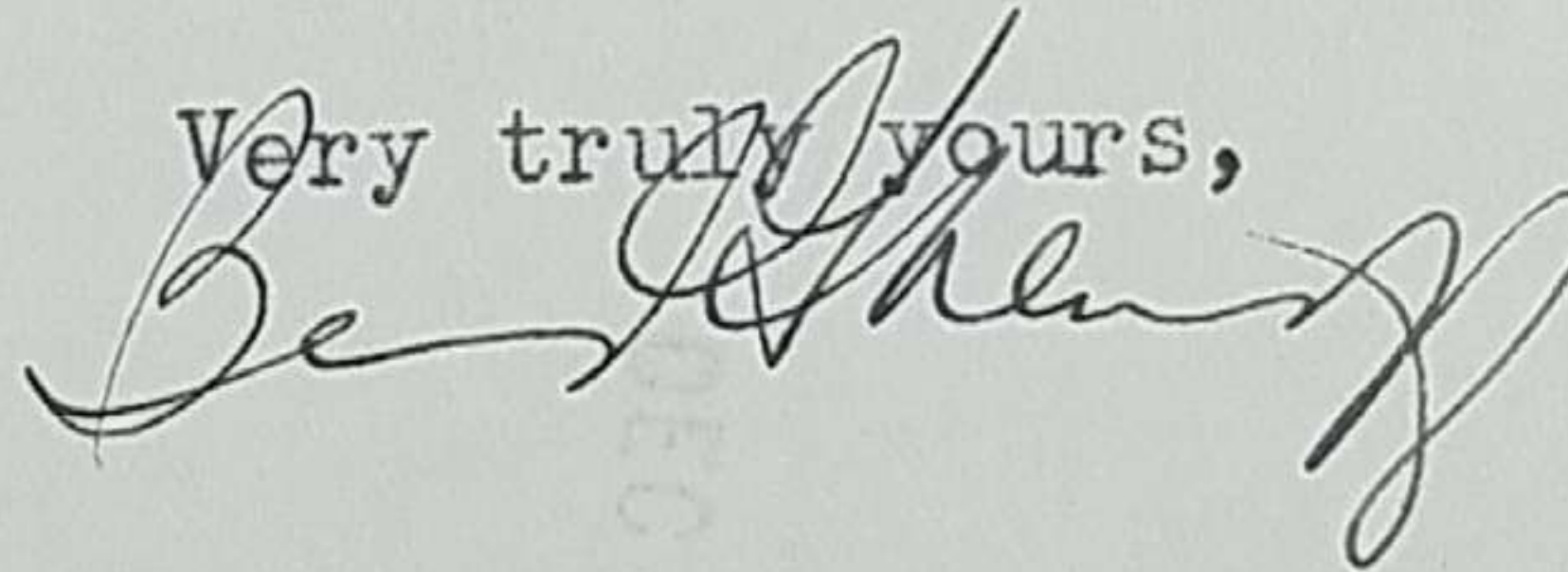
2.

December 27, 1921

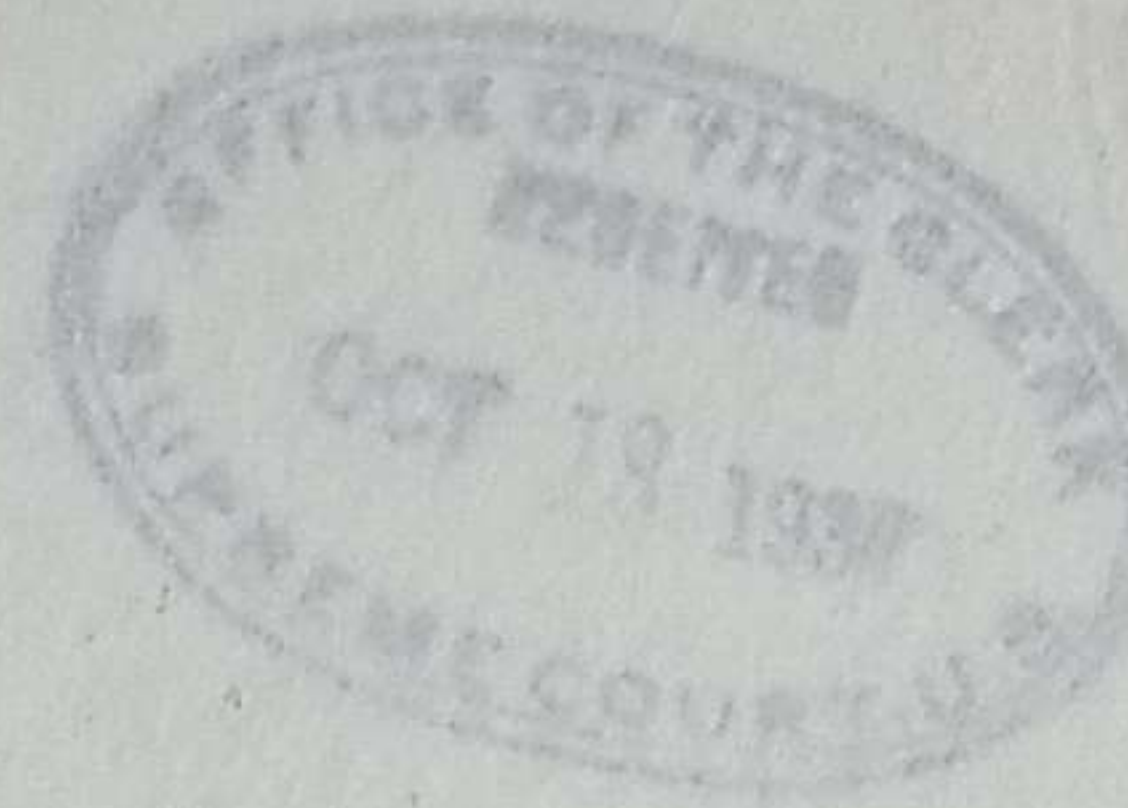
P.S. Present counsel of record on behalf of the respondent is Alexander L. Strouse who was kind enough to permit me to enter an order of appearance on his behalf because I was not admitted to the United States Supreme Court. I have engaged Frederick H. Rees, Esq. to appear upon the argument of the above case on behalf of the respondent. Mr. Rees expects to be admitted to the Supreme Court Bar on January 10th and it is my intention to thereafter have him appear as counsel for the respondent.

Will you please be good enough to advise me what, if anything, is necessary to be done with reference to the substitution of counsel under the circumstances above outlined.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Benjamin Franklin", written in dark ink.

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITENALL 4-5077



October 18, 1937

October 15, 1937

367
Bernard G. Nemeroff, Esq.

New York City

Dear Sir:

In reply to your inquiry of October 15th you are
advised that the case of Erie Railroad Co. v. Tompkins,
Washington, D.C.
No. 367, October Term, 1937, will not be reached for oral
argument before the session of the Court beginning December
6th.

A writ of certiorari to the Circuit Court of Appeals of the
Second Circuit was granted in the above matter by
decision of this court rendered October 11th.

Yours truly,
CHARLES ELMORE CROPLEY, Clerk

I should appreciate your advising me approximately when I
might reasonably expect this case to be reached for hearing
so that I can be better enabled to make the necessary arrange-
ments concerning briefs with my adversary.

Assistant

Very truly yours,

EPC:DK

BERNARD G. NEMEROFF

BNM:ER

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
—
WHITEHALL 4-5077



367

October 15, 1937

Clerk of United States Supreme Court
Washington, D.C.

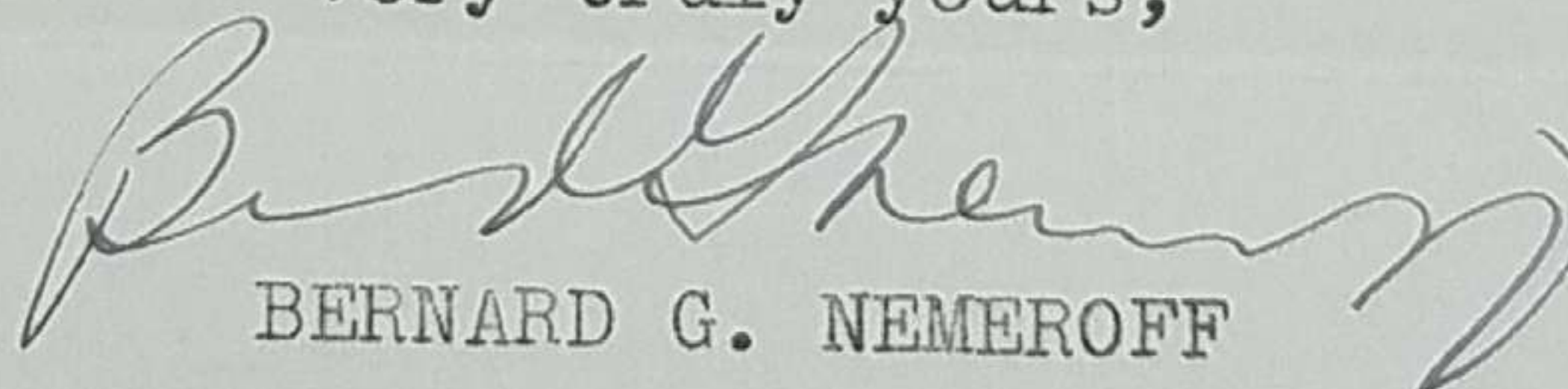
RE: ERIE V TOMPKINS, 367 OCTOBER TERM 1937

Dear Sir:

A writ of certiorari to the Circuit Court of Appeals of the Second Circuit was granted in the above captioned matter by decision of this court rendered October 11th.

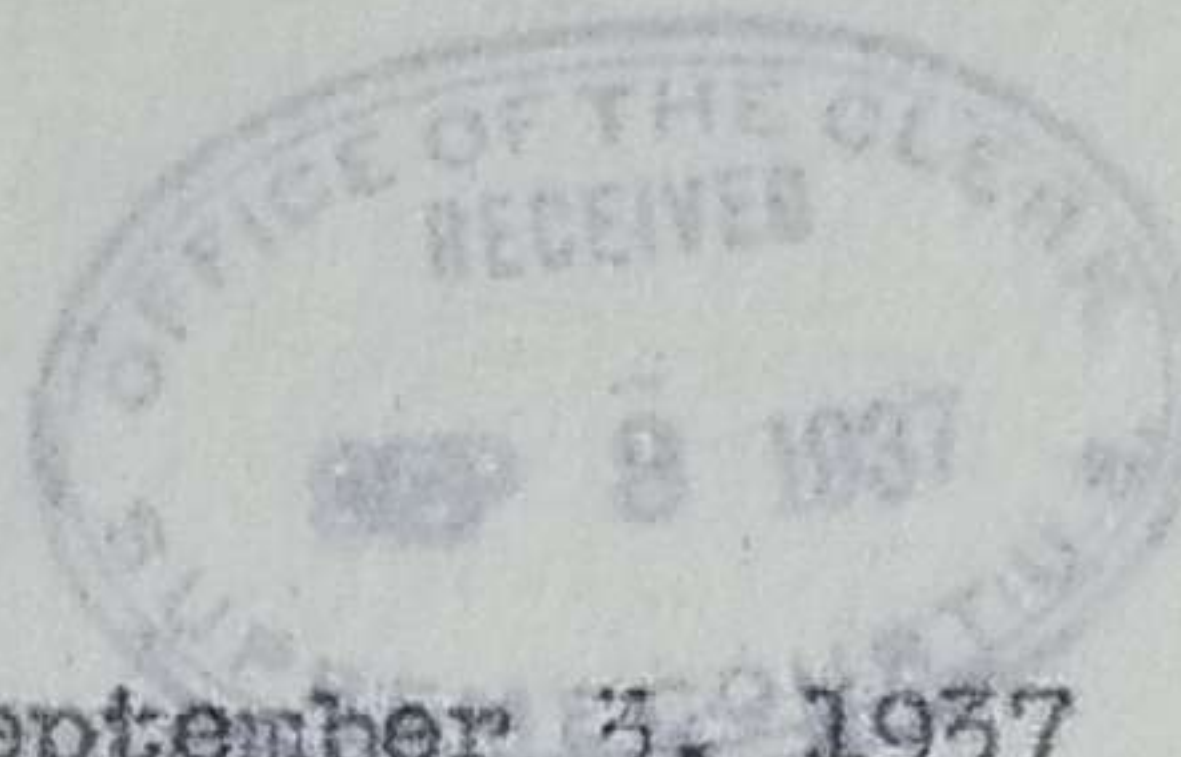
I should appreciate your advising me approximately when I might reasonably expect this case to be reached for hearing so that I can be better enabled to make the necessary arrangements concerning briefs with my adversary.

Very truly yours,


BERNARD G. NEMEROFF

BGN:BM

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITENALL 4-1890



September 3, 1937

September 2, 1937

367
Bernard G. Nemeroff, Esq.
New York City

Dear Sir:

Charles Elm I acknowledge receipt of your letter of the
Clerk Supreme Court United States
Was 2nd instant enclosing an order for appearance in the
case of Erie Railroad Co. v. Tompkins, No. 367, October
Term, 1937.

Enclosed herewith please find order Yours truly, of counsel
for respondent in the above captioned matter, in which a peti-
tion for a writ of certiorari CHARLES ELMORE CROPLEY, Clerk,
and bears docket number 367.

By

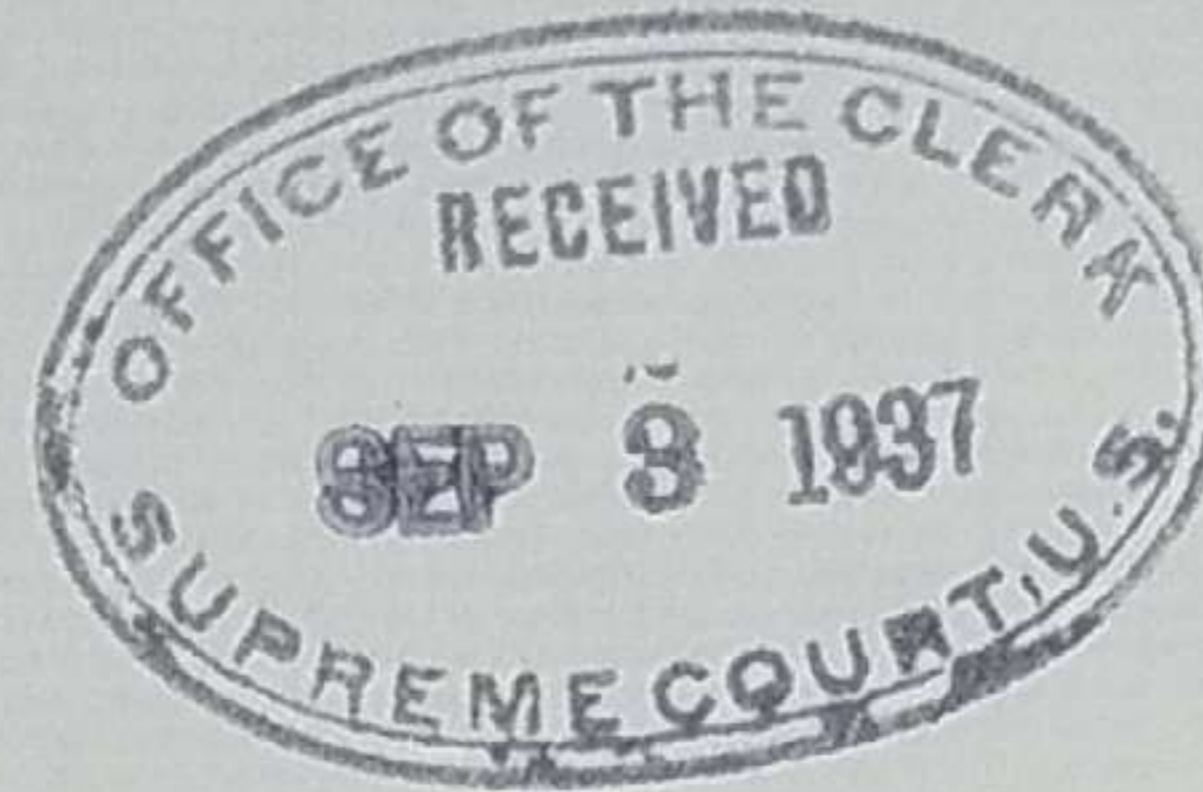
Very truly yours,

Assistant

HBW:DK

BERNARD G. NEMEROFF

BERNARD G. NEMEROFF
COUNSELOR AT LAW
32 BROADWAY
NEW YORK
WHITEHALL 4-1890



367

September 2, 1937

Charles Elmore Cropley, Esq.
Clerk Supreme Court United States
Washington, D.C.

RE: TOMPKINS V ERIE

Dear Sir:

Enclosed herewith please find order of appearance of counsel for respondent in the above captioned matter, in which a petition for a writ of certiorari was filed on August 30, 1937, and bears docket number 367.

Very truly yours,

A handwritten signature in cursive script, appearing to read "B. G. Nemeroff".

BERNARD G. NEMEROFF

BGN:BM
ENC:

| CLASS OF SERVICE DESIRED | |
|--------------------------|----------------|
| DOMESTIC | CABLE |
| TELEGRAM | FULL RATE |
| DAY LETTER | DEFERRED |
| NIGHT MESSAGE | NIGHT LETTER |
| NIGHT LETTER | SHIP RADIOGRAM |

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

COPY OF WESTERN UNION TELEGRAM

October 11, 1937.

Bernard G. Nemeroff

32 Broadway

New York, N. Y.

Petition for certiorari Erie Railroad against Tompkins ^{granted} ~~denied~~ today

Advise Mr. Strouse

CHARLES ELMORE CROPLEY, CLERK.

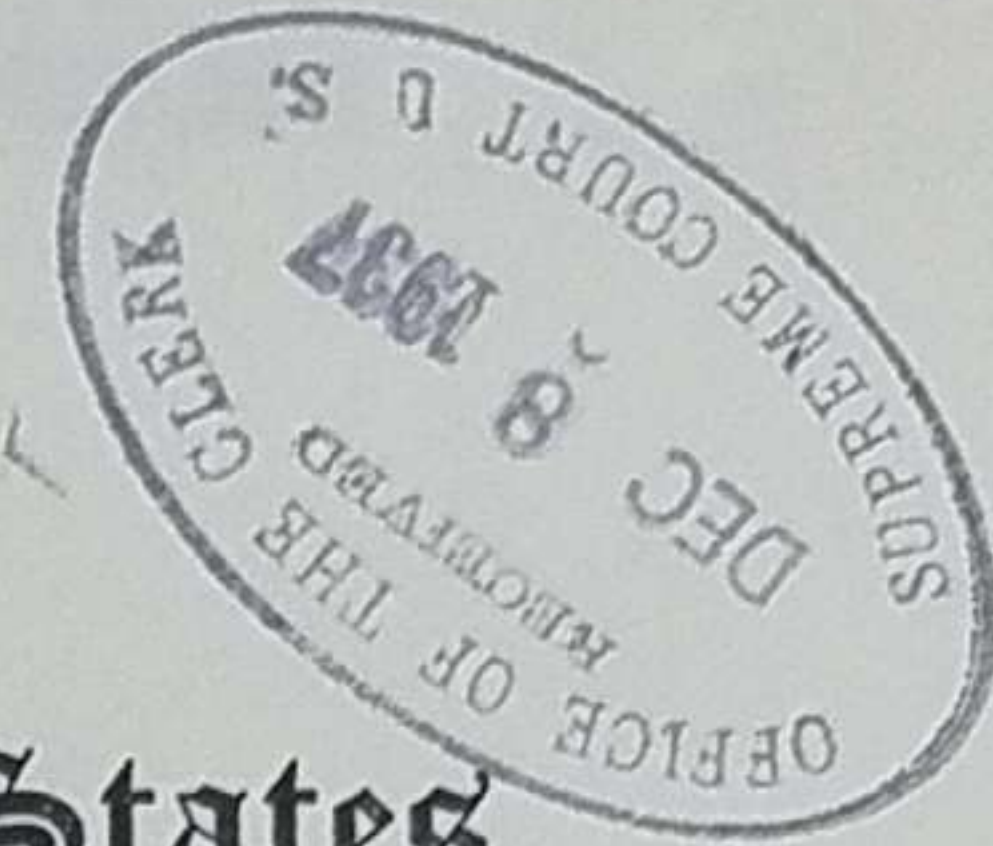
COLLECT

#367

r

RECEIPT FOR COPY OF RECORD

File No. _____



Supreme Court of the United States

Term No. 367, October Term, 1937

HARRY J. TOMPKINS

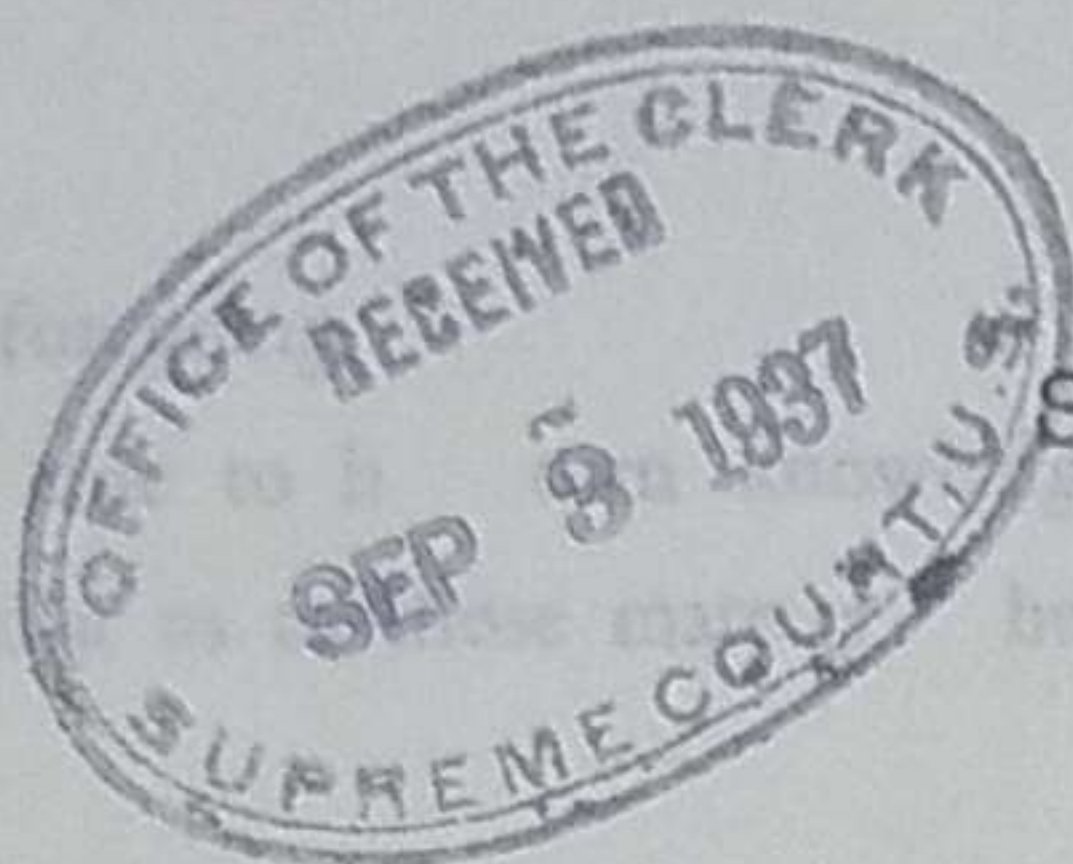
vs.

ERIE RAILROAD COMPANY

Received from the Clerk a copy of the Record as Counsel for the Plaintiff.

Alexander L. Strouse

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1937

ERIE RAILROAD COMPANY (A New York
Corporation),

Petitioner,

vs.

HARRY J. TOMPKINS,

No. 367

The Clerk will enter my appearance as Counsel
for the Respondent, HARRY J. TOMPKINS.

Dated, N.Y. September 1, 1937.

PLEASE TAKE NOTICE that all
papers in this action are
to be served on BERNARD G.
NEMEROFF, Esq., attorney
for Plaintiff, 32 Broadway,
New York City, New York.

Alexander L. Strouse
Alexander L. Strouse

Office and P.O. Address
185 Madison Avenue
Borough of Manhattan
New York City

Supreme Court of the United States

OCTOBER TERM, 193

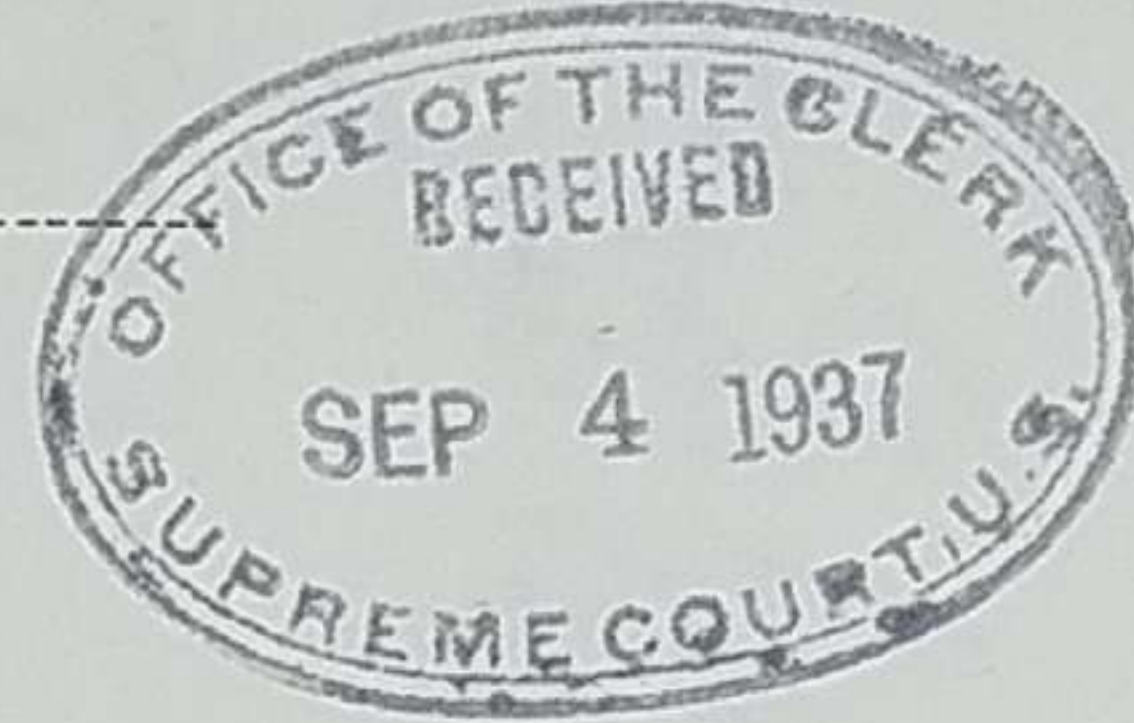
ERIE RAILROAD COMPANY (a New York
Corporation),

Petitioner,

vs.

HARRY J. TOMPKINS,

No. 367



To BERNARD G. NEMEROFF, Counsel for Respondent :

YOU ARE HEREBY NOTIFIED that a petition for a writ of certiorari in the above-entitled cause was filed in the Supreme Court of the United States on the 30th day of August, 1937.

A printed copy of the record and a printed copy of the petition and brief are served upon you herewith.

DAVIS POLK WARDWELL GARDINER & REED
HAROLD W. BISSELL

Counsel for Petitioner

Service accepted this 1st day of September, 1937.

Alexander L. Stouse
Bernard G. Nemeroff
Counsel for Respondent

Address 32 Broadway, New York, N. Y.

This notice, together with a printed copy of the petition, brief, and record are required to be served upon counsel for respondent within 10 days after the petition is filed, except where the petition seeks to review a judgment of the Court of Claims. In such case service is required to be made as soon as the petition, brief, and record are printed.

Respondent's brief (40 copies) must be filed within 20 days after service—25 days where counsel for respondent resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession—except when the time for filing falls in the summer recess, when the period is enlarged to 40 days, providing such enlargement does not extend the time beyond September 10. (Rule 38, par. 3, and Rule 41, par. 4, specify these requirements.)

Supreme Court of the United States

No. 367 _____, October Term, 1937.

Erie Railroad Company,

Petitioner,

vs.

Harry J. Tompkins.

Order allowing certiorari. Filed October 11 _____, 1937.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second _____ Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Per Mr. Chief Justice Hughes,

Mr. Justice Black took no part in the consideration and decision of this application.

April 26, 1938.

Fred H. Rees, Esquire,

New York, N. Y.

Dear Sir:

I enclose herewith a copy of the opinion of this Court, rendered on Monday, April 25th, in the case of Erie Railroad Company v. Harry J. Tompkins, No. 367, October Term, 1937.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

Enclosure
HBW:c

April 26, 1938.

Theodore Kiendl, Esquire,

New York, N. Y.

Dear Sir:

I enclose herewith a copy of the opinion of this Court rendered on Monday, April 25th, in the case of Erie Railroad Company v. Harry J. Tompkins, No. 367, October Term, 1937.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

Enclosure
HBW:c

January 22, 1938.

Davis, Polk, Wardwell, Gardiner & Reed, Esquires,
New York, N. Y.

Attention: Mr. Bissell

Gentlemen:

The continuance of several cases by order of the Court has made it necessary to revise the calendar for the week of January 31st. You were heretofore advised that the case of Erie Railroad Company v. Tompkins, No. 367, October Term, 1937, would be reached for argument the end of that week. You are now definitely advised that this case will be the first on call for Monday, January 31st.

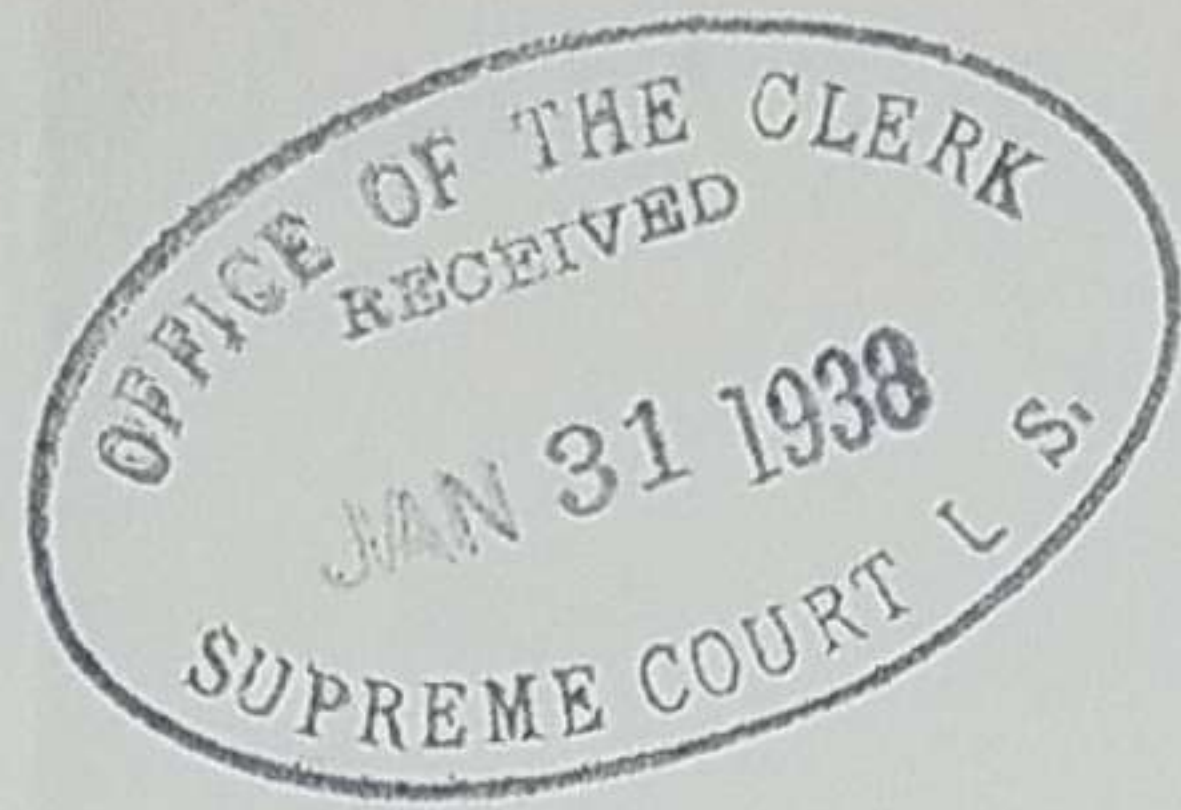
Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c



ERRATUM

In *Taylor v. Del. etc. Canal Co.*, 113 Pa. 162, 8 A. 43, cited herein at page 20, the facts are correctly stated. The holding is likewise correctly represented but through inadvertence a quotation from argument of counsel, rather than from the opinion, is set forth. A portion of the opinion which in substance is the same as the erroneous quotation is as follows (p. 175) :

“ * * * and where it is shown, as was done in this case, that the footpath across the company's land had been habitually used by the public for many years without objection, it is for the jury to say whether the company had not acquiesced in such use.

“While such use does not convert the company's right of way into a public highway, it certainly does relieve persons passing on the same from being treated as trespassers on the company's premises; and there is a manifest distinction between the degree of care which a railroad company is bound to exercise toward mere trespassers and those who may be using the right of way by tacit or implied permission of the company.

“In the case of such long continued use by the public, the company and its employees are charged with notice of the fact, and therefore cannot with impunity neglect precautions to prevent dangers to persons thus using the same.”

December 21, 1937.

Davis, Polk, Wardwell, Gardiner & Reed, Esquires,
New York, N. Y.

Gentlemen:

The case of Erie Railroad Company v.
Harry J. Tompkins, No. 367, October Term, 1937,
may be called for argument the end of the week
of January 10th.

If not reached at that time the case
will not come on for argument until the session
of the Court beginning January 31st.

I suggest that you inquire early in
the first-mentioned week for definite informa-
tion as to ^{when} ~~the day~~ counsel should be present.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

HBW:c

January 19, 1938.

Davis, Polk, Wardwell, Gardiner & Reed, Esquires,
New York, N. Y.

Gentlemen:

The case of Erie Railroad Company v.
Tompkins, No. 367, October Term, 1937, will be
reached for argument the end of the week of Jan-
uary 31st.

I suggest that you inquire on Febru-
ary 2nd for definite information as to the day
counsel should be present.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant

Assistant.

BPC:MK

HBW:c

JOHN B. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING GARDINER
WILLIAM C. REED
HALL PARK MICHELLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. SUNDERLAND
TOM GARRETT
THEODORE KENCL
MONTGOMERY G. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER C. FLETCHER
GARRELL H. BUNNISTER
LESLIE H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. D. SCHWARTZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET
NEW YORK



CABLE ADDRESS
STETSON

January 3, 1938

December 30, 1937.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs.

New York City

Re: Erie Railroad Company

Gentlemen:
v. Tompkins, No. 367,
October Term 1937.

I have your letter of December 30th together with forty copies of the petitioner's brief as well as proof of service thereof in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937.

Due to the state of the docket it is not possible at this time to comply with the request of counsel for the respondent that the hearing of the case be postponed until the session of the Court beginning January 31st.

Under separate cover, we are forwarding to you 40 copies of the petitioner's brief, together with one copy bearing admission of service by counsel for the respondent.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By
Very truly yours,

Assistant

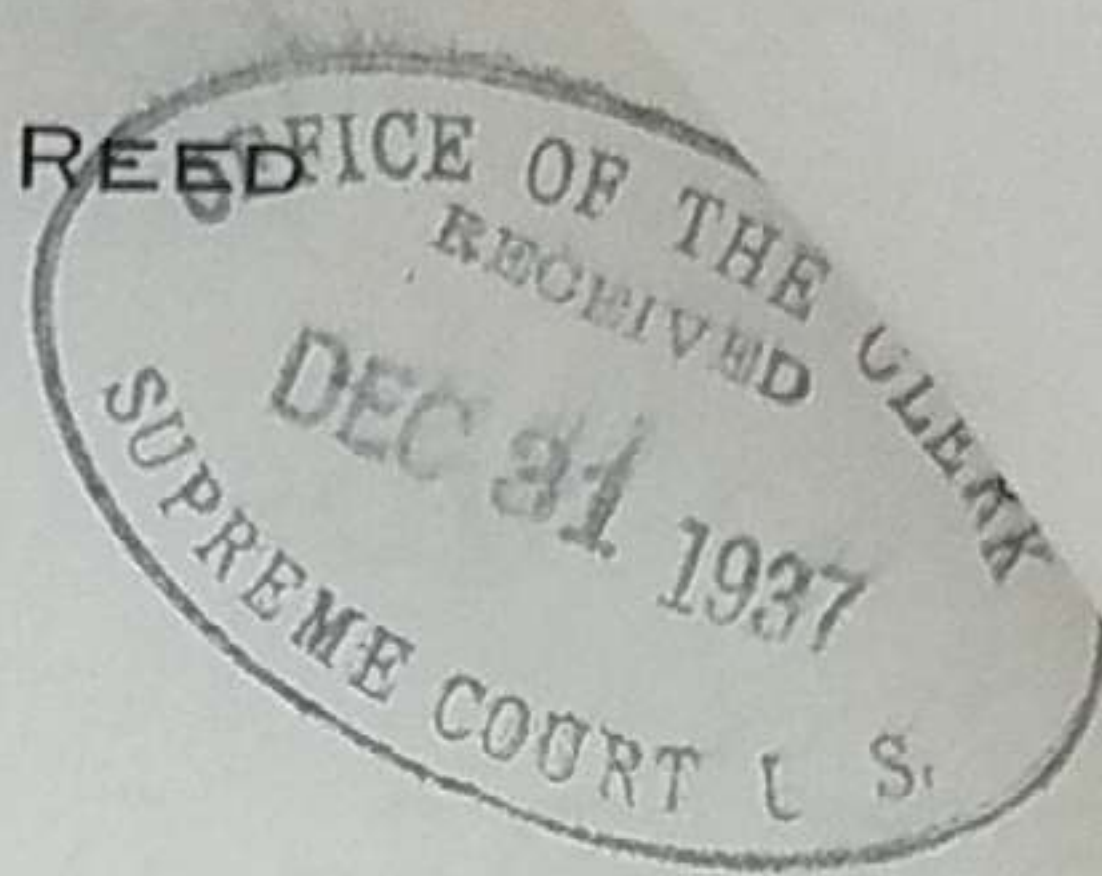
EPC:DK

HWB-o
Encl.

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET
NEW YORK



December 30, 1937.

367
Re: Erie Railroad Company
vs. Tompkins, No. 367,
October Term 1937.

Clerk of the Supreme Court of the United States,
Washington, D.C.

Dear Sir:

We enclose herewith receipt for 13 copies of the
record in the above case.

We are advised by counsel for the respondent that
they wish to have the argument put over, if possible, to
the session of the Court commencing January 31st. We
informed them and hereby confirm to you that we have no
objection to such a postponement, if agreeable to the
Court.

Under separate cover, we are forwarding to you
40 copies of the petitioner's brief, together with one
copy bearing admission of service by counsel for the
respondent.

Very truly yours,

Davis Polk Wardwell Gardiner & Reed

HWB-o
Encl.

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET

NEW YORK

367

Re: Harry J. Tompkins v. Erie
Railroad Company

August 13, 1937.

Mr. Charles Elmore Cropley,
Clerk of the Supreme Court of the United States,
Washington, D. C.

Dear Sir:

On Wednesday of this week Mr. Bissell of this office left with you three copies of the record in the above case on appeal to the Circuit Court of Appeals for the Second Circuit, including the original containing the additions by the Clerk of the Circuit Court of Appeals. Under separate cover we are sending you the seven additional copies of the record, required by your office.

We enclose herewith our check for \$60.00 to cover your fee and the printing costs as stated to Mr. Bissell.

When the Circuit Court of Appeals' additions have been printed, may we ask that you send us six copies, one of which we will affix to a copy to be served upon the attorneys for the respondent, Harry J. Tompkins.

As Mr. Bissell stated to you, Judge Cardozo granted a stay provided the application for the writ of certiorari be filed on or before September 1, 1937.

Very truly yours,

Davis Polk Wardwell Gardiner Reed

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. BUNDERLAND
TOM GARRETT
THEODORE KENDALL
MONTGOMERY B. BAZELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER S. LESTER
CARROLL H. BREWSTER
LEIGHTON H. GOLDMAN
EDGAR S. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARTZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET

NEW YORK

CABLE ADDRESS
STETSON

October 14, 1937

October 13, 1937.

Davis, Polk, Wardwell, Gardiner & Reed, Esqs.

New York City

Re Erie Railroad Company

v. Tompkins, No. 367 - October Term 1937.

Gentlemen:

In reply to your letter of October 13th I give below an estimate of the probable Clerk's and printing costs which will accrue in the case of Erie Railroad Co.

v. Tompkins, No. 367, October Term, 1937:

| | |
|---------------|----------|
| Clerk's costs | \$160.00 |
| Printing " | 700.00 |
| Total | \$860.00 |

This estimate is based upon the use of thirty prints, photographs and photostats. We understand that it will be necessary to make: and, subject to your approval, we shall do this and which I understand you will furnish this office. In the next few days. We assume that you will reprint the exhibit numbers and captions, leaving places to paste in the reproductions which we are

as they appear in the record I believe it would be more satisfactory to have them reduced in size so that they will not be necessary to fold them in the record. We understand, however, that you prefer to have them reproduced in their present sizes. We shall, Yours truly, comply with your wishes in this matter.

CHARLES ELMORE CROPLEY, Clerk

We shall await your advice as to the printing costs.

By

Very truly yours, Assistant

EPC:DK

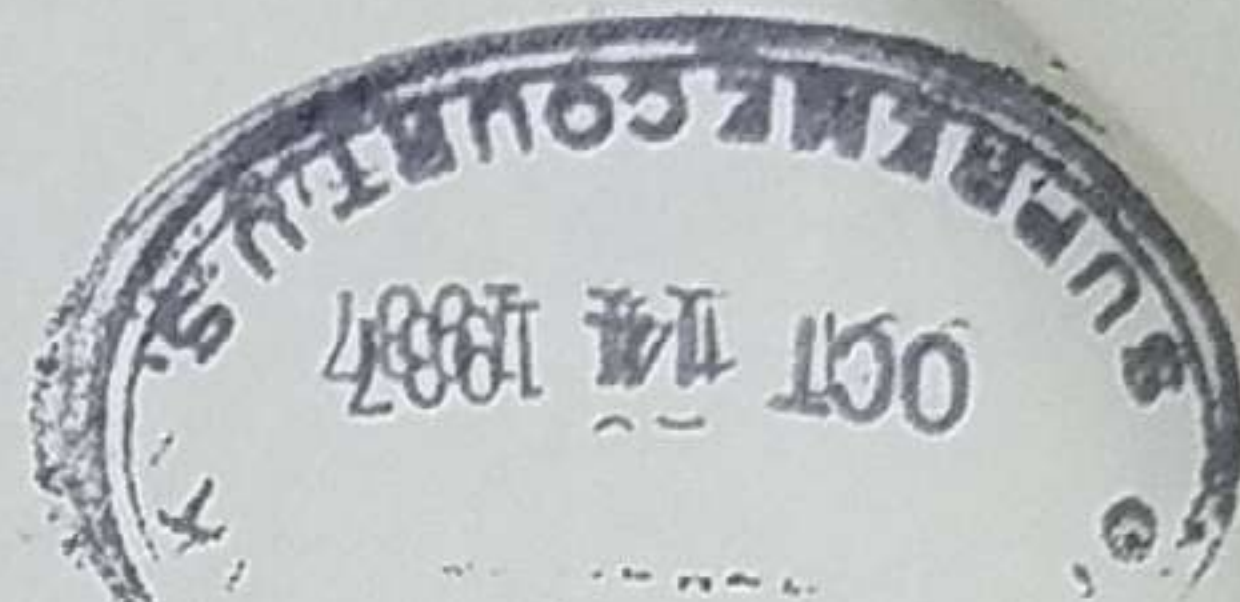
Davis, Polk, Wardwell, Gardiner & Reed

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

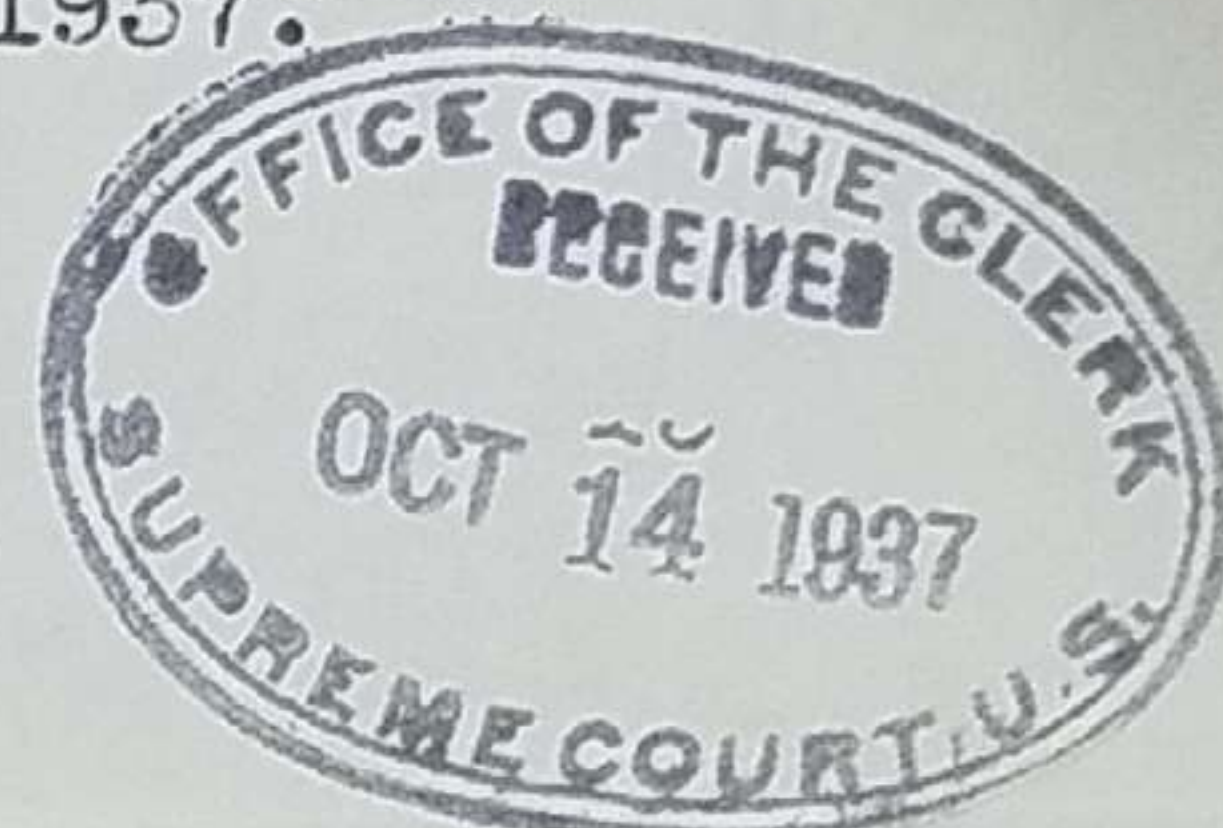
DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET
NEW YORK

367



October 13, 1937.



Re Erie Railroad Company
v. Tompkins, No. 367 - October Term 1937.

Charles Elmore Cropley, Esq.,
Clerk of the Supreme Court of the United States,
Washington, D. C.

Dear Sir: Attention Mr. H. B. Willey.

With reference to your letter of October 12 and telephone conversation of today with our office, we beg to advise you that we have no more copies of the record in the above matter as printed for the use of the Circuit Court of Appeals. We understand, therefore, that you will have the record reprinted in Washington.

The exhibits consist entirely of blue prints, photographs and photostats. We understand that it will be agreeable to you for us to have copies of the exhibits made; and, subject to your approval, we shall do this and forward thirty copies of each to you within the next few days. We assume that you will reprint the exhibit numbers and captions as they appear in the present record, leaving places to paste in the reproductions which we are to supply.

It would be possible to have the photographs and photostats reduced in size to fit the size of page used for records before the Supreme Court. We understand, however, that you prefer to have them reproduced in their present sizes. We shall, of course, comply with your wishes in this matter.

We shall await your advice as to the printing costs.

Very truly yours,

Davis Polk Wardwell Gardiner & Reed

1600 fol.

6. 160.00
P. 700.00
H 860.00

October 12, 1937

Davis, Polk, Wardwell, Gardiner & Reed, Esqs.

New York City

Gentlemen:

Certiorari having been granted in the case of
Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937,
it now becomes necessary to prepare copies of the record
for the use of the Court upon the hearing of the case on
the merits.

I write at this time to inquire if you have
available twenty more copies of the record as printed for
the use of the Circuit Court of Appeals. If copies of the
record are available it will not be necessary that it be
reprinted. Kindly advise me immediately.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk

By

HBW:DK

Assistant

| CLASS OF SERVICE DESIRED | |
|--------------------------|----------------|
| DOMESTIC | CABLE |
| TELEGRAM | FULL RATE |
| DAY LETTER | DEFERRED |
| NIGHT MESSAGE | NIGHT LETTER |
| NIGHT LETTER | SHIP RADIOGRAM |

Patrons should check class of service desired; otherwise message will be transmitted as a full-rate communication.

COPY OF WESTERN UNION TELEGRAM

October 11, 1937.

Davis Polk Wardwell Gardiner & Reed

15 Broad Street

New York, N. Y.

Petition for certiorari Erie Railroad against Tompkins ^{granted} ~~denied~~ today

CHARLES ELMORE CROPLEY, CLERK.

COLLECT

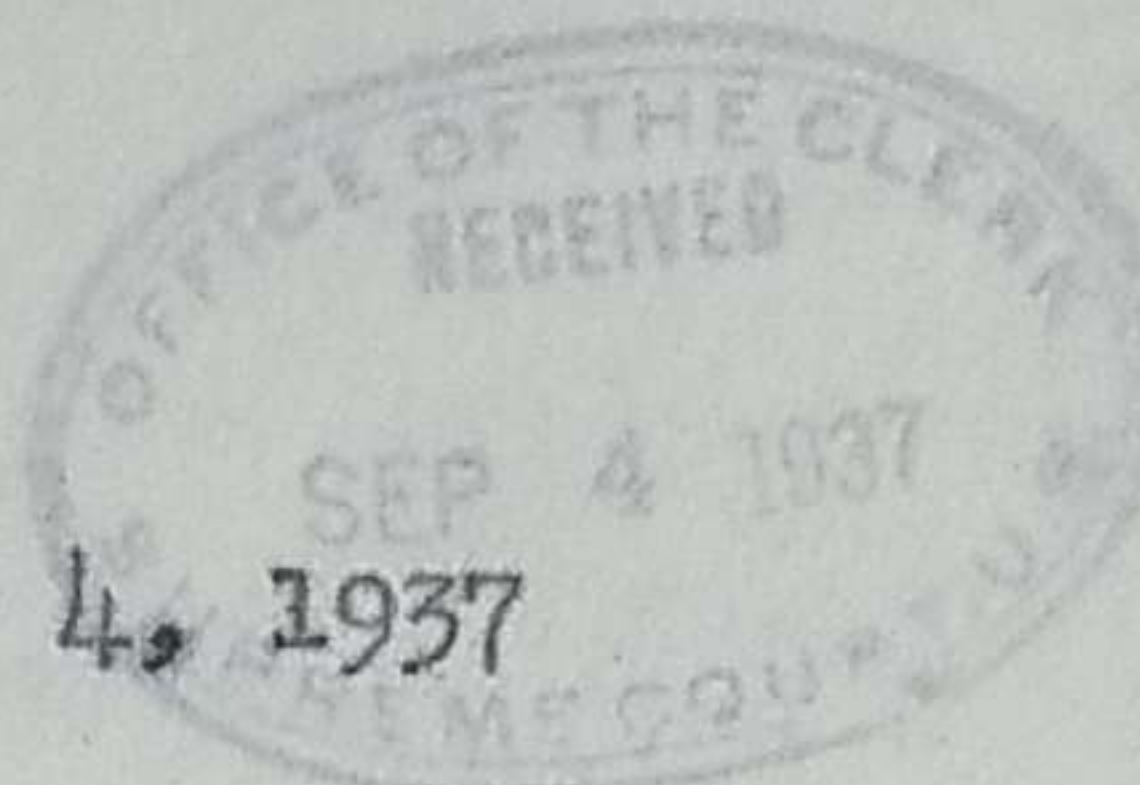
#367

p

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING B. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. RUNDERLAND
TOM BARRETT
THEODORE KENDL
MONTGOMERY BARBER
OTIS T. BOWEN
GEORGE J. SPURGEON
WILLIAM J. HAYES
CARROLL A. BROWN
LESLIE A. HAYES
EDGAR S. FREEMAN
WILLIAM C. HAYES
FREDERICK A. SCHWAB
MARION H. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & BUREAU)
15 BROAD STREET
NEW YORK

CABLE ADDRESS
STETSON



September 4, 1937

Davis, Polk, Wardwell, Gardiner & Reed, Esqs. 1937.

New York City

Mr. Charles Elmore Cropley,

Gentlemen:

Supreme Court of the United States,

Washington

I acknowledge receipt of your letter of the
3rd instant enclosing proof of service in the case of
Erie Railroad Co. v. Tompkins, No. 367, October Term,
1937. Petition, Brief and Record upon the Respondent on Septem-
ber 1, 1937, in the case of Erie Railroad Co. v. Tompkins,

No. 367, October Term, 1937. Yours truly,
CHARLES ELMORE CROPLEY, Clerk

Very truly yours,

By

Davis Polk Wardwell Gardiner & Reed
Assistant

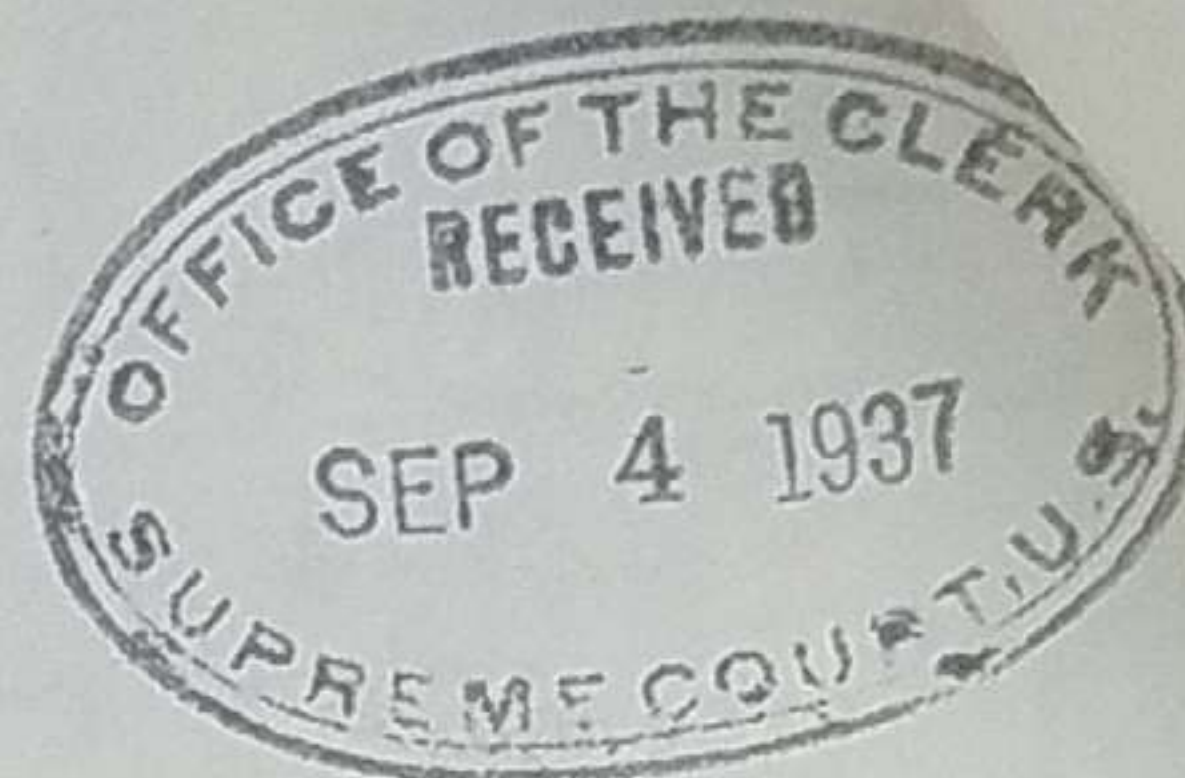
HEW:DK

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REE
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET

NEW YORK



367/

September 3, 1937.

Mr. Charles Elmore Cropley,
Clerk,
Supreme Court of the United States,
Washington, D.C.

Dear Sir:

Enclosed herewith is Proof of Service of Notice,
Petition, Brief and Record upon the Respondent on September 1, 1937, in the case of Erie Railroad Co. v. Tompkins, No. 367, October Term, 1937.

Very truly yours,

Davis Polk Wardwell Gardiner & Ree

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING R. REED
WILLIAM C. CANNON
WALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARNETT
THEODORE KENDL
WILLIAM W. BARNES
WILLIAM T. BARNES
GEORGE A. BARNES
WALTER C. FLETCHER
DANIEL H. BARNES
EDWIN T. BARNES
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARTZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
OF THE
(STETSON JENNINGS & BARNES)

15 BROAD STREET

NEW YORK

CABLE ADDRESS
STETSON

September 2, 1937

September 1, 1937.

367

Davis, Polk, Wardwell, Gardiner & Reed, Esqs.
Charles Elmore Cropley, Esq.,
New York City
Supreme Court of the United States,
Washington, D. C.

Gentlemen:

Dear Sir: Attention Mr. Willey.

I acknowledge receipt of your letter of the
Enclosed herewith is the order for ap-
1st instant enclosing an order for the appearance of
Tompkins, as requested in your letter of August 31.
Mr. Bissell as counsel for the petitioner in the case
of Erie Railroad Co. v. Tompkins, No. 367, October
Term, 1937.

Davis Polk Wardwell Gardiner & Reed
Yours truly,
CHARLES ELMORE CROPLEY, Clerk

By

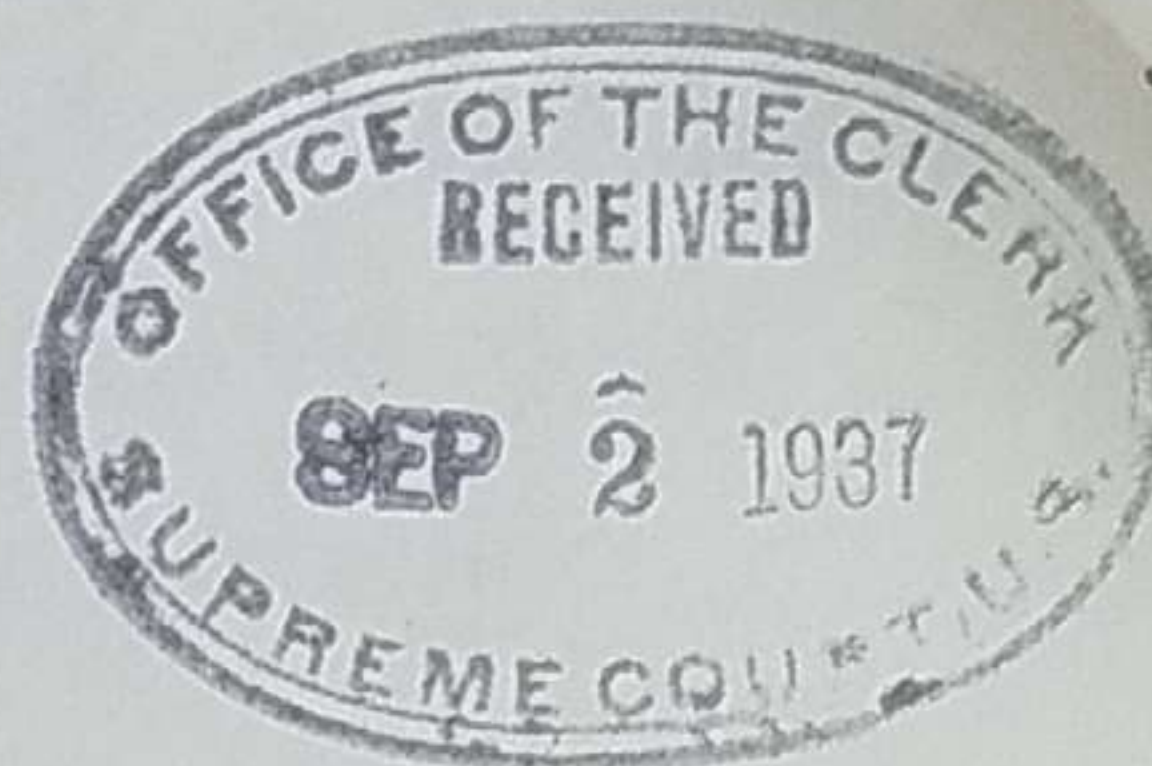
Assistant

HEW:DK

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK McCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET
NEW YORK



September 1, 1937.

367
Charles Elmore Cropley, Esq.,
Clerk,
Supreme Court of the United States,
Washington, D. C.

Dear Sir: Attention Mr. Willey.

Enclosed herewith is the order for appearance in Erie Railroad Company against Harry J. Tompkins, as requested in your letter of August 31.

Yours very truly,

Davis Polk Wardwell Gardiner & Reed
Stetson Jennings & Russell

Term No. 367, Oct. Term, 37

August 31, 1937.

Davis Polk Wardwell Gardiner & Reed, Esquires,
New York, N. Y.

Gentlemen:

Attention: Mr. Bissell

When you called at the office yesterday
to file the petition for writ of certiorari in the
case of Erie Railroad Company v. Harry J. Tompkins,
No. 367, October Term, 1937, I overlooked the fact
that an order for the appearance of counsel for
the petitioner had not been signed.

Form for that purpose is enclosed.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Assistant.

✓ Enclosure
HBW:c

August 30, 1937.

William Parkin, Esq.,

New York, N.Y.

Dear Sir:

At the request of counsel, I enclose herewith a certificate, evidencing the docketing today of the case of Erie Railroad Company v. Harry J. Tompkins, as No. 367, October Term, 1937.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk.

By

Assistant.

HBW-W

Encl.

ENC1.

JOHN W. DAVIS
FRANK L. POLK
ALLEN WARDWELL
LANSING P. REED
WILLIAM C. CANNON
HALL PARK MCCULLOUGH
J. HOWLAND AUCHINCLOSS
EDWIN S. S. SUNDERLAND
TOM GARRETT
THEODORE KIENDL
MONTGOMERY B. ANGELL
OTIS T. BRADLEY
GEORGE A. BROWNELL
WALTER D. FLETCHER
CARROLL H. BREWSTER
LEIGHTON H. COLEMAN
EDGAR G. CROSSMAN
HENRY CLAY ALEXANDER
RALPH M. CARSON
FREDERICK A. O. SCHWARZ
MARION N. FISHER

DAVIS POLK WARDWELL GARDINER & REED
(STETSON JENNINGS & RUSSELL)

15 BROAD STREET
NEW YORK

CABLE ADDRESS
STETSON

367
October 16, 1937.

Erie Railroad Co. v. Tompkins
No. 367, October Term, 1937.

Charles Elmore Cropley, Esq., Clerk,
Supreme Court of the United States,
Washington, D.C.

Dear Sir:

In response to your letter of October 14th, we enclose herewith our check for \$860., to cover Clerk's costs and printing costs in the above matter.

In accordance with your request, we are having the photostat exhibits reduced in size to conform to the size of page used in records before the Supreme Court. We understand that these exhibits will be ready about the 20th of this month. We will see that 30 copies of each are forwarded to you promptly.

Very truly yours,

Davis Polk Wardwell Gardiner & Reed

HWB-o
Encl.

Washington, D. C., August 12th 1937

CHARLES ELMORE CROPLEY, Esq.,
Clerk of the Supreme Court of the United States,

Jacket 598

To JUDD & DETWEILER, Inc., Dr.
Printers and Publishers

To Thirty Copies of Record No. Add to Record.

OCTOBER TERM, 1937

Harry J. Tompkins

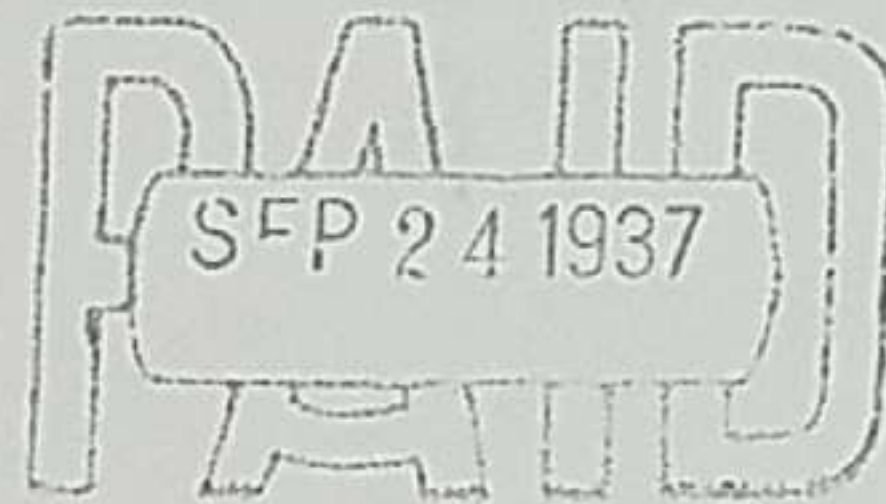
vs.

Erie Railroad Co.

7 pages @ \$1.65 per page
20 Extra copies 7 pages @ 25¢ per page

| | | |
|----|----|----|
| \$ | 11 | 55 |
| | 1 | 75 |
| \$ | 13 | 30 |

OFFICE SUPREME COURT, U. S.



Washington, D. C., November 27th 1937

CHARLES ELMORE CROPLEY, Esq.,
Clerk of the Supreme Court of the United States,

Jacket 2376

To JUDD & DETWEILER, Inc., Dr.
Printers and Publishers

To Thirty Copies of Record No. 367

OCTOBER TERM, 1937

Erie Railroad Company

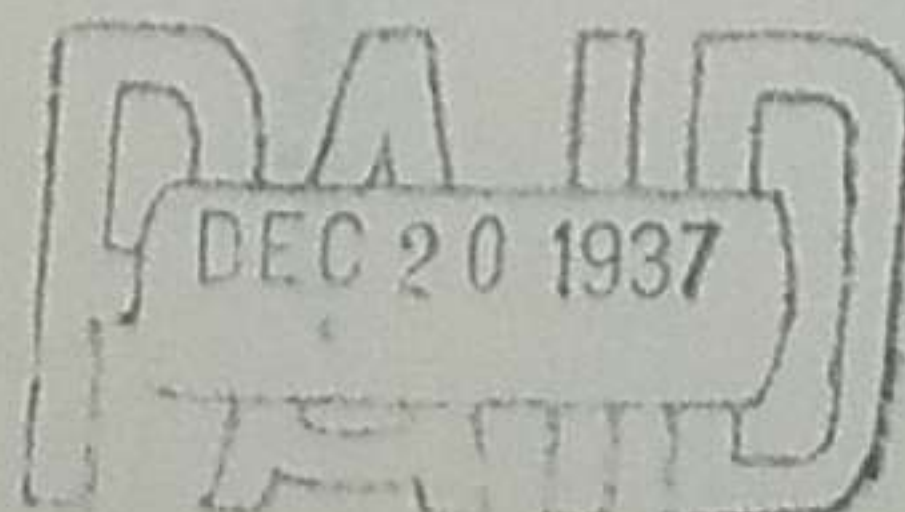
vs.

Harry J. Tompkins.

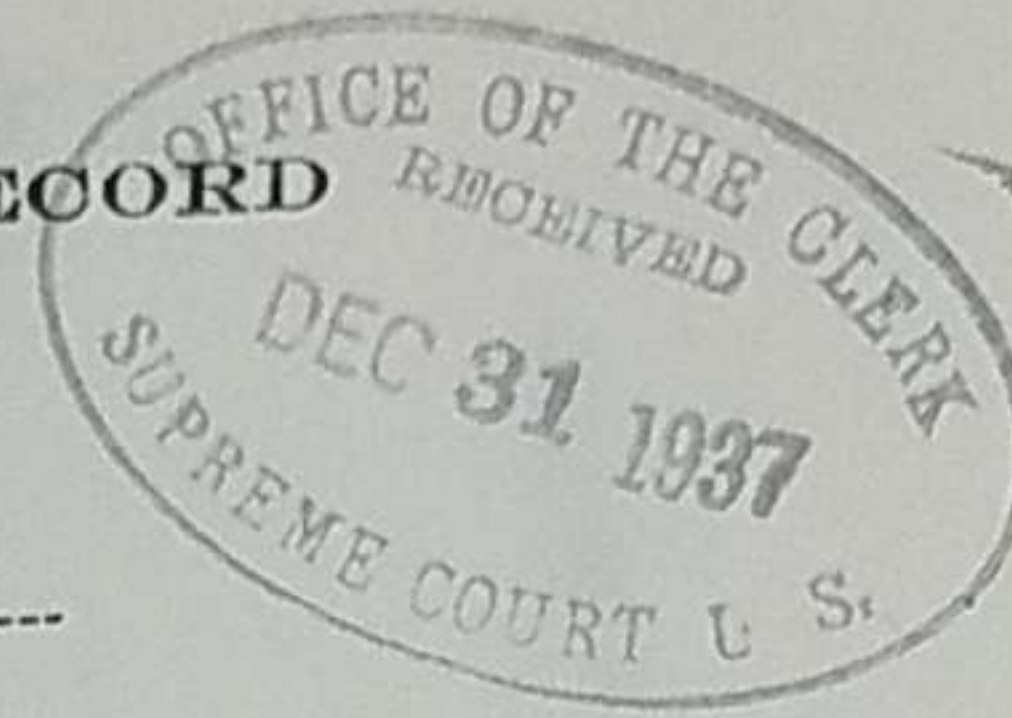
363 pages @ \$1.65 per page
2 1/2 " Index @ \$ 4.00
Tipping maps, 8 hrs. @ 80¢
29 Gum pasters @ \$1.00
Numbering
Binding
Covers
10 Extra copies
366 pages @ 5¢ per page
Binding
Covers

| | | |
|----|-----|----|
| \$ | 598 | 95 |
| | 10 | 00 |
| | 6 | 40 |
| | 29 | 00 |
| | 1 | 40 |
| | 15 | 00 |
| | 4 | 00 |
| | 18 | 30 |
| | 5 | 00 |
| | 1 | 00 |
| \$ | 689 | 05 |

OFFICE SUPREME COURT, U. S.



RECEIPT FOR COPY OF RECORD



File No. 367

Supreme Court of the United States

Term No. 367, October Term, 1937

Erie Railroad Company (a New York
Corporation), Petitioner

vs.

Harry J. Tompkins,

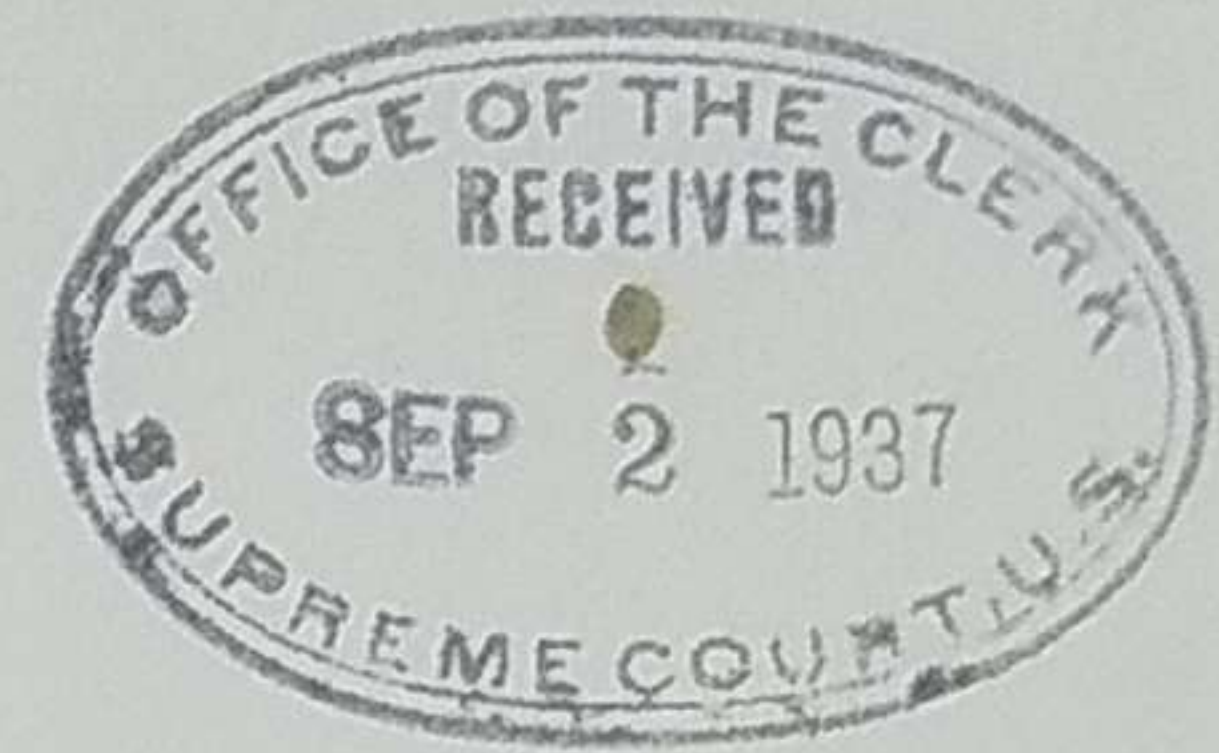
Respondent

Received from the Clerk ¹³ a copy of the Record as Counsel for the Petitioner

Harold W. Bissell

(Davis, Polk, Wardwell, Gardiner & Reed)

ORDER FOR APPEARANCE



Supreme Court of the United States

No. 367, October Term, 1937

ERIE RAILROAD COMPANY (a New York
Corporation), Petitioner

vs.

HARRY J. TOMPKINS.

The Clerk will enter my appearance as Counsel for the Petitioner

(Name) Harold W. Bissell

(P. O. Address) 15 Broad Street
New York City

NOTE.—Must be signed by a member of the Bar of the Supreme Court United States. Individual and not firm names must be signed.